

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 15-CR-637(KAM)

-against-

: United States Courthouse
: Brooklyn, New York

MARTIN SHKRELI,

: Thursday, June 26, 2017
: 9:00 a.m.

Defendant.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT COURT JUDGE, and a jury.

A P P E A R A N C E S:

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Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

1 (In open court; prospective jurors not present.)

2 THE COURTROOM DEPUTY: This is criminal jury
3 selection, United States of America versus Martin Shkreli.
4 15-CR-637. If the parties could please identify themselves
5 and make their appearances known for the record.

6 MS. KASULIS: Jacqueline Kasulis, Alixandra Smith,
7 Karthik Srinivasan, Gabriela Balbin, and special agents from
8 the FBI, Michael Braconi and Sean Sweeney, for the Government.
9 Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. BRAFMAN: Benjamin Brafman, Marc Agnifilo,
12 Andrea Zellan, Jacob Kaplan for Mr. Shkreli, who is present in
13 the courtroom.

14 THE COURT: Good morning.

15 Are the parties ready to proceed?

16 MR. BRAFMAN: Yes, Your Honor.

17 MS. KASULIS: Yes, Your Honor.

18 THE COURT: Thank you.

19 As you can see, Counsel, we have laid out where the
20 jurors will be sitting. We will have a total of 40 jurors in
21 our panel. Jurors 1 through 10 in the first row, starting on
22 the left and going right. Jurors 11 through 20 on the second
23 row and then 31 to 40 on the third row. And then, here in
24 front, we will have Juror Nos. 41 through -- I'm sorry, 31
25 through 40.

1 Extending on to the right in the first row, just in
2 terms of jurors that we need to call, 41 to 46 will sit on the
3 far right and then they will follow in the main rows. I
4 believe all decisions have been made on pending motions. Are
5 there any motions that the parties believe have not been
6 resolved? Except for the motion for reconsideration.

7 MR. BRAFMAN: Yes, your Honor. That's the only one.

8 MS. KASULIS: That's correct.

9 THE COURT: I have a question. There was a
10 forfeiture count in the indictment. As we know, Mr. Shkreli
11 has the right to have that tried before a jury. The parties
12 have not notified me as to how they intend to proceed on the
13 forfeiture.

14 Does Mr. Shkreli want --

15 MR. BRAFMAN: One moment, Your Honor.

16 (Pause.)

17 MR. BRAFMAN: Your Honor, what I think we would most
18 prefer, respectfully, once the jury reaches a verdict on all
19 of the charges in the indictment and announces the verdict,
20 before they are dismissed, if there is an acquittal, I don't
21 think there is going to be an issue. If there is a
22 conviction, it depends on the count. And if there is a
23 conviction, we would then, perhaps, make additional argument
24 to the Court or the same panel with respect to forfeiture. I
25 don't think we need a separate trial on the forfeiture issue

1 if the Government agrees.

2 THE COURT: Well, we only have to deal with
3 forfeiture if there is a conviction on a count that has a
4 forfeiture attached to it, but he does have the right to have
5 the trial, the jury decide the forfeiture issues. My question
6 is whether you want that right, just so I know not to excuse
7 the jurors.

8 MR. BRAFMAN: We want to reserve that right, yes,
9 your Honor. Thank you.

10 THE COURT: Thank you.

11 Is there anything else I should address before we
12 bring in the jurors? I was intending to allow them to keep
13 notes with proper instructions, but I think because it is a
14 six-week trial, unless somebody has an objection, I was
15 intending to allow them to take notes.

16 MR. BRAFMAN: Does the Court take the notes from the
17 jurors when they leave the building?

18 THE COURT: Yes. They are left on the chairs when
19 they leave the courtroom.

20 MR. BRAFMAN: Then we have no objection.

21 MS. KASULIS: No objection from the Government.

22 THE COURT: No objection from the Government or the
23 defense. Okay.

24 Now, I will read the short statement provided by the
25 Government regarding the summary from the defense. I didn't

1 receive anything from the defense, so I am assuming that it is
2 acceptable to the defense. If it is not, I would like to
3 address it now.

4 MR. BRAFMAN: Your Honor, I don't think we received
5 it.

6 THE COURT: It was filed on ECF, was it not?

7 MS. SMITH: Yes, your Honor.

8 THE COURT: I could read it to you if you would like
9 to hear it, Mr. Brafman.

10 MR. BRAFMAN: Yes, please.

11 THE COURT: It reads, The Defendant, Martin Shkreli,
12 is charged in an eight-count indictment with committing
13 various acts of securities fraud, conspiracy to commit
14 securities fraud and conspiracy to commit wired fraud in
15 Counts One through 3, Defendant Shkreli is charged with
16 conspiracy to commit security fraud, conspiracy to commit wire
17 fraud, and a substantive counsel of securities fraud in
18 relation to an entity known as MSMB Capital. In Counts 4
19 through 6, Defendant Shkreli is charged with conspiracy to
20 commit securities fraud, conspiracy to commit wire fraud, and
21 a substantive count of securities fraud in relation to an
22 entity known as MSMB Healthcare.

23 In Counts 7 and 8, Defendant Shkreli is charged with
24 conspiracy to commit securities fraud and conspiracy to commit
25 wire fraud in relation to an entity known as Retrophin.

1 MR. BRAFMAN: Your Honor, if we can write something
2 out quickly or if you would just advise them that Mr. Shkreli
3 has entered a plea of not guilty to all of the charges and he
4 is presumed to be not guilty unless and until the Government
5 proves his guilt beyond a reasonable doubt, that would be
6 acceptable to the Defendant, Your Honor.

7 THE COURT: Well, we do advise the jurors that he
8 has entered a plea of not guilty and that is what the case is
9 going to be tried.

10 MR. BRAFMAN: That's fine, Judge.

11 THE COURT: So is this statement acceptable?

12 MR. QUAN: Yes.

13 THE COURT: Okay.

14 And as the parties requested, we will chose 12
15 jurors with six alternates. We will be seating 40 jurors.
16 The preemptory challenges will be conducted in six rounds.
17 The Government will have one in each round. Mr. Shkreli will
18 have two in the first four rounds and one in rounds five and
19 six.

20 The Defendant will strike first in rounds one, three
21 and five, and the Government will strike first in rounds two,
22 four, and six. I have distributed a chart to help the parties
23 keep track.

24 We will then proceed to the alternate rounds
25 immediately, during which each party will have one challenge

1 in three rounds. The Defendant will challenge first in
2 alternate round one and three. The Government will challenge
3 first in alternate round two. If a challenge is waived in any
4 round, it may not be used in future rounds. It will cause the
5 last juror with the highest number, or I should say the last
6 number, to be stricken.

7 The Government and the Defendant will have one
8 challenge for the first of the three alternates.

9 The discussions at sidebar will be here to my right.
10 And, as you know, I issued a press order last evening. I
11 don't know who among the press pool in the Eastern District
12 will be present at the sidebar. Is it Ms. Hurtado?

13 MS. HURTADO: I will be first, and the New York
14 Times will be second, and then Mr. Keshner from the Daily News
15 will be third as for today.

16 THE COURT: All right. Thank you. And have you
17 received a copy of the order?

18 MS. HURTADO: I saw it last night, ma'am.

19 THE COURT: So the press pool is familiar with the
20 ground rules, which are pretty self-evident?

21 MS. HURTADO: Yes, your Honor.

22 THE COURT: Thank you.

23 If the parties are ready then, we will see if our
24 jurors are ready and we will bring them in.

25 MS. ZELLAN: Your Honor, will we be given a list of

1 the jurors?

2 THE COURT: Yes.

3 MS. ZELLAN: Will that come before you start seating
4 them in the well box?

5 THE COURT: As she goes to get the jurors, she is
6 handed a list. I think what they are trying to do with the
7 list is they will eliminate people who may not have paid
8 attention to the instructions regarding the language. You
9 will have it by the time they start getting seated.

10 MS. ZELLAN: Understood. Thank you, Judge.

11 THE COURT: We have to correct the math again. I
12 think we need to seat 34, not 40, given the number of jurors.
13 I think, Ms. Zellan, 40, but it should be 34.

14 MS. ZELLAN: Okay.

15 THE COURT: Okay. It is 34, yes.

16 MS. SMITH: Your Honor, are we doing alternates
17 separately?

18 THE COURT: We are going to bring in the alternates.

19 MS. SMITH: Okay. Because I have we will need 18,
20 12, and 6, and then 16 strikes on the main pool and 6 on the
21 alternates, so then that's how we got to 40.

22 (The prospective jurors enter.)

23 THE COURT: Good morning.

24 Are you Juror No. 5? Just put them in their seats.

25 MR. GROVER: This is Juror No. 6.

1 THE COURT: Is Juror No. 5 not here?

2 THE LAW CLERK: In a moment.

3 THE COURT: Good morning, ma'am. Are you Juror
4 No. 11?

5 THE JUROR: Yes.

6 THE COURT: Please have a seat on the far left, the
7 second row. Good morning, please sit in a seat that is
8 associated with your number. Thank you.

9 We are going to seat all 40 up in the front row.

10 Mr. Grover, do you know what happened to Juror No.
11 23?

12 MR. GROVER: I will go find out, ma'am.

13 THE COURT: Thank you.

14 Mr. Grover, everybody has to be seated in the rows
15 designated. If you could accomplish that. Thank you.

16 Is that Juror No. 23?

17 MS. NEWMAN: This is jurors 38 and 39.

18 THE COURT: Ms. Jackson, I want everybody up to 40
19 in the front row here.

20 MS. JACKSON: Yes.

21 THE COURT: Mr. Grover, can I see you for a second.

22 (Continued on next page.)
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25

1 THE COURT: Thank you for your patience, ladies and
2 gentlemen. I know there is quite a bit of waiting. We just
3 have do get everybody in before we can get started.

4 (Pause.)

5 THE COURT: We are getting close to starting so if
6 somebody is in need of using the facilities, please do so now
7 and come right back. It is just across the hall. All right.
8 And please come right back.

9 (Pause.)

10 THE COURT: I think we are ready to get started. I
11 would like to thank all the jurors for coming today.

12 I would like to introduce myself. My name is Judge
13 Kiyo Matsumoto. To my left is my law clerk Vivek Tata and my
14 case manager, Ms. Sandra Jackson.

15 I appreciate that everybody is here today and I
16 thank you for your patience.

17 Does anybody have trouble hearing me? If so, please
18 raise your hand.

19 Just for the record, we have Jurors Numbers 23 and
20 115 who did not show up this morning and we will deal with
21 that later, but I wanted to advise the parties.

22 Please pay close attention to me as I go through
23 these instructions. Please listen carefully and above all, do
24 not discuss this case with anybody.

25 You are here today because we are about to select a

1 jury to serve in a criminal case. Trial is expected to begin
2 after jury selection, most likely tomorrow morning.

3 The trial currently is expected to last at the most
4 six weeks. We will not hold trial on Monday, July 3rd or
5 Tuesday, July 4th. Fortunately, this particular trial
6 promises to be interesting and educational for all jurors and
7 those who will be selected to serve.

8 As I said, this is a criminal case commenced by the
9 United States which is frequently referred to as "the
10 Government." Representing the United States are Assistant
11 United States Attorneys Jacquelyn Kasulis, Alixandra Smith and
12 G. Karthik Srinivasan. Also seated at the government's table
13 are Special Agent Michael Braconi and Sean Sweeney of the
14 Federal Bureau of Investigation and paralegal specialist,
15 Gabriela Balbin.

16 The defendant in this case, Mr. Martin Shkreli, is
17 represented today by Mr. Benjamin Brafman.

18 MR. BRAFMAN: Good morning.

19 THE COURT: Mr. Marc Agnifilo, Ms. Andrea Zellan,
20 Mr. Jacob Kaplan and they will later be joined by an attorney
21 Teny Geragos.

22 The fact that this prosecution is brought in the
23 name of the United States does not entitle the Government to
24 any greater consideration than any other party who appears in
25 court. All parties, the Government and individuals, are

1 equals before the court and all are entitled to equal
2 consideration. No party is entitled to sympathy or favor.

3 The purpose of jury selection is to ensure fairness
4 and impartiality in this case. The way we try to be sure that
5 a jury can be fair and impartial is by going through a process
6 called voir dire. Basically, I will be asking you questions
7 both as a group and individually about your background and
8 views on certain subjects. It is not my intention to invade
9 your privacy, but simply to ensure as best I can that you sit
10 fairly and impartially in this particular case.

11 At times, this will be tedious and I ask you please
12 to bear with me.

13 If in the course of this questioning process you do
14 think that because of some experience that you have had in
15 your life or because of something that you have heard or read,
16 that you could not be fair and impartial, that is, you would
17 be inclined toward the Government or toward the defendant
18 regardless of what the evidence shows. It is your duty to
19 tell me that. That is because both the Government and the
20 defendant have a right to a qualified impartial jury, one that
21 will decide this case without fear, favor, prejudice or
22 passion, and will render a verdict based solely on the
23 evidence presented at the trial and the law that I will give
24 you at the conclusion.

25 Now, quite apart from whether or not I must excuse

1 you, the lawyers are entitled to exercise a certain number of
2 what are called peremptory challenges which means that they
3 may excuse a juror, a certain number of prospective jurors
4 without giving any reason. If you are excused, no personal
5 affront is intended.

6 It is important that all of you listen because the
7 answers you give to the questions that I ask must be stated to
8 me under oath. So, when you give your answers, you will be
9 under oath. I will ask Ms. Jackson now to administer the oath
10 to you.

11 Please raise your right hands.

12 (Prospective jurors sworn.)

13 THE CLERK: Thank you.

14 THE COURT: This case comes before the Court by way
15 of indictment. The indictment is captioned United States of
16 America against Martin Shkreli. The indictment is simply a
17 document that the Government uses to state the charges against
18 a defendant. It serves no other purpose and it is not
19 evidence.

20 I am going to summarize the charges in the
21 indictment so you can understand what this case will be about
22 but, again, remember that any evidence pertaining to this case
23 and the charges will come before you only when we begin the
24 actual trial.

25 This is the indictment. Again, it is only a charge.

1 It is not evidence.

2 The defendant Martin Shkreli is charged in an eight
3 count indictment with committing various acts of securities
4 fraud, conspiracy to commit securities fraud and conspiracy to
5 commit wire fraud.

6 In Counts One through Three, Defendant Shkreli is
7 charged with a conspiracy to commit securities fraud,
8 conspiracy to commit wire fraud and a substantive count of
9 securities fraud in relation to an entity known as MSMB
10 Capital.

11 In Counts Four through Six, Defendant Shkreli is
12 charged with conspiracy to commit securities fraud, conspiracy
13 to commit wire fraud and a substantive count of securities
14 fraud in relation to an entity known as MSMB Healthcare.

15 In Count Seven and Eight, Mr. Shkreli is charged
16 with conspiracy to commit securities fraud and conspiracy to
17 commit wire fraud in relation to an entity known as Retrophin.

18 Now, the defendant has pleaded not guilty to all of
19 the charges in the indictment and has thus raised issues of
20 fact to be determined by the jury. Let me now advise you that
21 it is the Government that has the burden of proof in any
22 criminal case to establish a defendant's guilt beyond a
23 reasonable doubt as to each element of each charged offense.

24 The defendant is presumed to be innocent. In that
25 regard, the defendant has no burden whatsoever to present any

1 evidence or to testify. Because the United States
2 Constitution protects a defendant's right to remain silent,
3 the law prohibits you from considering when you deliberate
4 that the defendant may not have testified. This is a basic
5 principal of our criminal justice system.

6 The role of a jury in a criminal case is to hear the
7 evidence and decide the facts, that is, to decide what
8 happened. The judge does not have any role to play in your
9 determination of the facts. As the judge, my role is to
10 instruct you on the applicable law. You will apply the facts
11 as you find them to the law as I instruct you and your
12 conclusion will be your verdict. You must apply the law as
13 stated by me at the end of the case regardless of any opinion
14 that you personally may have as to what the law is or should
15 be. If any of you would have any difficulty doing this, you
16 must bring that to my attention.

17 Now, we will be asking questions first of jurors who
18 have been identified as Juror Number 1 through 41. So, for
19 those whose numbers are 1 through 41, please listen to my
20 questions and if your answer to my question would be "yes" or
21 if you have an answer, please raise your hand. For those of
22 you who are not jurors number 1 through 41, please listen
23 carefully, in any event, because I will ask you if it becomes
24 necessary whether your answers to my questions would have been
25 "yes."

1 So, for example, I will be asking the jurors whether
2 they know any of the attorneys or parties in this case or any
3 of the court personnel that I have introduced. As I have
4 said, it is important for all of you, even though whose
5 numbers are not number 1 through 41, to pay close attention to
6 all of my questions and make a note if your answer to my
7 question would have been "yes." If any of the jurors whose
8 numbers are 1 through 41 are excused, you may be called to
9 replace that juror and I will not go through repeating every
10 single question that I have asked up to that point. Instead,
11 I will simply ask you if your answer to any of my previous
12 questions would have been yes.

13 It is very important that all of you listen to my
14 questions very carefully and consistent with the oath you have
15 taken, answer them as honestly, conscientiously and candidly,
16 completely and truthfully as you can.

17 If when I ask these questions your answers to my
18 question would be "yes," please raise your hand. For some
19 questions, I may ask you to answer from where you are seated.
20 For other questions of a personal or private nature, I may ask
21 if you are comfortable answering from your seat and if you
22 are, you may do so. If you are not comfortable, you may
23 answer from the side bar which will be conducted here to my
24 right out of the hearing of the rest of the jurors.
25 Similarly, for certain questions that have to do with your

1 ability to decide this case fairly, I may ask you to come to
2 side bar to answer. At side bar, as I said, your answers will
3 not be heard by other jurors, but the attorneys for the
4 parties and necessary court personnel will be present.
5 Because judicial proceedings are open and public, one press
6 reporter will also be present at side bar.

7 If I ask you to come to side bar to discuss your
8 answer further, I will not ask you your name. I will refer to
9 you only by your number. So, your answers will not be
10 associated with your name, but it is critical for each of you
11 to ensure the parties' right to a fair trial so all of you
12 must be candid and truthful in answering my questions. If
13 there are issues that you do not feel comfortable discussing
14 in the presence of a press reporter, again, who will not be
15 referring to you by name, please let me know at that time and
16 I will ask the reporter to step back.

17 Is there anyone here who either did not understand
18 or who cannot accept any of the principles of law that I have
19 explained thus far? If so, please raise your hand.

20 Is there anyone who has heard anything about this
21 case before today?

22 In cases that receive media attention, it is not
23 wrong to have an opinion about what you may have heard in the
24 media. The critical issue for you is whether your opinion
25 will interfere with your ability to be fair and impartial to

Side Bar

18

1 both sides and decide this case based solely on the evidence
2 and the instructions of law at this trial.

3 So, if you have heard anything about this case so
4 far, have you formed any opinion about the case that will
5 affect your ability to be fair and impartial? If so, please
6 raise your hand.

7 All right. Ma'am, do you feel comfortable, Juror
8 Number One, answering from your seat?

9 THE PROSPECTIVE JUROR: No.

10 THE COURT: All right. Would you like to go to side
11 bar?

12 THE PROSPECTIVE JUROR: Yes.

13 (The following occurred side bar; prospective juror
14 joins.)

15 THE COURT: Yes, ma'am?

16 THE PROSPECTIVE JUROR: I didn't want to say it in
17 front of the jury pool which is I wanted to go to the side
18 bar, but I'm aware of the defendant and I hate him.

19 MR. BRAFMAN: I'm sorry.

20 THE PROSPECTIVE JUROR: I think he's a greedy little
21 man and I don't think I can be fair.

22 THE COURT: All right. Well, one thing that jurors
23 are obligated to do is to decide the case based only on the
24 evidence at the trial. Do you agree?

25 THE PROSPECTIVE JUROR: I don't know if I could. My

CMH

OCR

RMR

CRR

FCRR

Side Bar

19

1 opinion on him is pretty well formed and I wouldn't want me on
2 this jury.

3 THE COURT: You wouldn't want yourself on the jury?

4 THE PROSPECTIVE JUROR: Yes. Yes.

5 THE COURT: Would you step back over by the door,
6 please?

7 (Prospective juror leaves side bar.)

8 MR. BRAFMAN: Your Honor, I assume we can agree on a
9 challenge for cause.

10 MS. SMITH: Yes.

11 THE COURT: Yes.

12 MR. BRAFMAN: That's Juror Number One.

13 THE COURT: Juror Number One is excused and we will
14 then call Juror Number, it would be 42, right? Who will be
15 sitting in her place? So, on your list, Juror Number 42 will
16 move into the number one spot.

17 MR. AGNIFILIO: Can I make a suggestion, Judge? I
18 think for any of the people, because you're giving them the
19 option of answering these questions from their seats, I'm just
20 afraid that someone might answer the question from their seats
21 and say something like what Juror Number One just said, "I
22 hate the defendant," so maybe we should do all of them here
23 and not give them the choice.

24 THE COURT: All right. That's fine. That's fine
25 with me. I thought you were --

CMH

OCR

RMR

CRR

FCRR

Side Bar

20

1 MR. AGNIFILIO: No.

2 THE COURT: -- opposed to something.

3 MR. BRAFMAN: You want us to stay up here and bring
4 the others?

5 THE COURT: Yes, I will.

6 (Prospective juror joins sidebar.)

7 THE COURT: Ma'am, you can take your things and go
8 to the jury room and tell them that you have been excused from
9 this panel, but you are available to sit on another case.

10 THE PROSPECTIVE JUROR: All right. Thank you.

11 THE COURT: Go back to the jury room. Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Who else had their hand up?

15 Juror Number 17, come on up.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: This is Juror Number 17. Yes?

18 THE PROSPECTIVE JUROR: Yes. I believe Mr. Shkreli
19 is the person associated with the company that raised the
20 price of EpiPens. I'm familiar with that situation. I'm on
21 several medications, injected medication for arthritis as well
22 as allergy medications. I keep EpiPens in my house so I feel
23 I come in with a negative opinion of Mr. Shkreli and I don't
24 know that I can be okay about it.

25 THE COURT: First of all, this case has nothing

CMH

OCR

RMR

CRR

FCRR

Side Bar

21

1 whatsoever to do that --

2 THE PROSPECTIVE JUROR: I understand that.

3 THE COURT: -- with the price of any pharmaceuticals
4 and he is not associated with EpiPens, but there is some media
5 reporting about raising the price of other pharmaceuticals.

6 The question for you is whether you could put out of
7 your mind what you have heard in the media and whether you
8 could decide this case based only on the evidence with a fair
9 mind to both sides and maintain your sense of impartiality and
10 fairness as you listen to the evidence. Would you do that?

11 THE PROSPECTIVE JUROR: I don't believe that I
12 would. I believe that would be in the back of my mind as a
13 negative against Mr. Shkreli. I think he might be better
14 served with a juror who didn't have that in his head. That's
15 my belief.

16 THE COURT: All right. Sir. Let me just ask you to
17 step away over towards that seat over there.

18 (Prospective juror leaves side bar.)

19 MR. BRAFMAN: Your Honor, we would challenge him for
20 cause.

21 MS. KASULIS: No objection.

22 THE COURT: All right.

23 (Prospective juror joins side bar.)

24 THE COURT: Sir, we are going to excuse you from
25 this panel, but you must go back to the jury room and tell

Side Bar

22

1 them you are available to be selected from another panel for
2 another case. All right, sir?

3 THE PROSPECTIVE JUROR: All right.

4 THE COURT: Thank you for your candor.

5 (Prospective juror excused.)

6 THE COURT: Before I replace the jurors, should we
7 just get through this and then I will just call them?

8 MR. BRAFMAN: Yes.

9 (In open court.)

10 Number 18 and 19, please come to side bar.

11 (Side bar continues; prospective juror joins.)

12 THE COURT: Juror number 18.

13 THE PROSPECTIVE JUROR: Yes. Both of my parents are
14 on certain prescriptions that have gone up increasingly over
15 the last few months. So much that they can't afford their
16 drugs. So they have to find other methods of either take the
17 drugs or dealing with life, essentially their daily routine
18 and paying for that stuff.

19 In the business that I work in, I have several
20 friends that have HIV or AIDS that have, again, can't afford
21 the prescription drugs that they obviously were able to afford
22 and they can't.

23 THE COURT: All right. These charges don't concern
24 anything that you might have heard in the media regarding drug
25 pricing.

Side Bar

23

1 THE PROSPECTIVE JUROR: Understandable.

2 Unfortunately, that's in the back of my mind the whole time.

3 THE COURT: Could you decide this case based only on
4 the evidence --

5 THE PROSPECTIVE JUROR: No. No.

6 THE COURT: -- presented at this trial and put aside
7 anything you might have heard in the media?

8 THE PROSPECTIVE JUROR: No. No. Unfortunately, I
9 cannot. I'm sorry.

10 THE COURT: All right. Let me have you step over to
11 the side.

12 (Prospective juror leaves side bar.)

13 MR. AGNIFILIO: We move for cause.

14 THE COURT: Yes. Any objection?

15 MS. KASULIS: No.

16 (Prospective juror joins side bar.)

17 THE COURT: Sir, we are going to excuse you from
18 this panel.

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: But you must go back to the jury room
21 and tell them you will be able to sit on some other case.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Who else had their hand up, please?

25 Juror Number 19, come forward, please.

CMH

OCR

RMR

CRR

FCRR

1 (Side bar continues; prospective juror joins.)

2 THE COURT: Are you all right?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Have a seat.

5 Yes, sir. You are Juror Number 19?

6 THE PROSPECTIVE JUROR: Yes, I am.

7 THE COURT: What would you like to tell us about
8 what you have heard?

9 THE PROSPECTIVE JUROR: I'm a financial advisor.
10 I've seen him on the financial news. He makes the rounds.
11 I'm also -- I currently right now actually just got served an
12 arbitration by FINRA.

13 THE COURT: You have been served with a FINRA --

14 THE PROSPECTIVE JUROR: I've been just served.

15 THE COURT: Well, the question for you, sir, is
16 whether you --

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: -- are able to decide this case and
19 listen to the case throughout the trial with an open and fair
20 mind toward both the Government and Mr. Shkreli and not make
21 any conclusions until the time of deliberation and could you
22 put out of your mind or could you do that, could you maintain
23 your posture as a fair and impartial juror as you listen to
24 the evidence in this case?

25 THE PROSPECTIVE JUROR: Yes. I'm just letting you

Side Bar

25

1 know that I am aware who he is.

2 THE COURT: Okay.

3 THE PROSPECTIVE JUROR: It just happened recently.

4 THE COURT: It's fine to have opinions about things
5 we read in the news. Most thinking people do. The question
6 for you is whether your opinions would cloud your ability to
7 be fair to both sides.

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: And would you, if you are selected,
10 pledge to decide this case based only on the evidence
11 presented at the trial and apply the law as I instruct you?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. Thank you. Let me just have
14 you step aside there.

15 (Prospective juror leaves side bar.)

16 MR. BRAFMAN: We have no challenge for cause.

17 THE COURT: Let me ask him to maintain his seat.

18 (Prospective juror joins side bar.)

19 THE COURT: Juror Number 19, would you please go
20 back to your seat? Thank you.

21 (Prospective juror leaves side bar.)

22 (In open court.)

23 THE COURT: Did Juror 20 have his hand up? No.
24 Okay. Who else?

25 Juror Number 25, come forward, please.

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Side Bar

26

1 Please do not talk about this case or anything else
2 that's happening with your fellow potential jurors, please.

3 (Side bar continues; prospective juror joins.)

4 THE COURT: Have a seat.

5 THE PROSPECTIVE JUROR: Hello.

6 THE COURT: Hello. You are Juror Number 25,
7 correct?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: You had your hand up. What can you tell
10 me?

11 THE PROSPECTIVE JUROR: This is the price gouging,
12 right, of drugs?

13 THE COURT: This case has nothing to do with drugs.

14 THE PROSPECTIVE JUROR: My kids use those drugs.

15 THE COURT: As I said, the case does not concern
16 anything that you might have read or heard about the pricing
17 of certain pharmaceuticals.

18 THE PROSPECTIVE JUROR: It affects my opinion of
19 him.

20 THE COURT: All right. The question for you is
21 whether you, despite having heard reports in the media about
22 Mr. Shkreli, whether you could maintain a fair and impartial
23 state of mind and listen with an open mind to the evidence and
24 decide this case based only on the evidence at this trial and
25 apply the law as I instruct you.

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Side Bar

27

1 THE PROSPECTIVE JUROR: I don't think so, not based
2 on what I've seen, his interviews, and the fact that impacts
3 my kids.

4 THE COURT: Okay.

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: All right. Let me ask you to step over
7 to the side.

8 (Prospective juror leaves side bar.)

9 THE COURT: This is Juror Number 25.

10 MR. BRAFMAN: We would move to challenge him for
11 cause, Your Honor.

12 THE COURT: Any objection?

13 MS. KASULIS: No objection.

14 (Prospective juror joins side bar.)

15 THE COURT: Sir, come here. You don't have to step
16 up here.

17 THE PROSPECTIVE JUROR: Okay.

18 THE COURT: I am going to excuse you. I am going to
19 ask you to take your things, go back to the jury room and tell
20 them you are available to serve on some other jury.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Was there anyone else in this row?

24 You are Juror Number 30. Please come forward.

25 (Side bar continues; prospective juror joins.)

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1 THE COURT: Yes, ma'am. You are Juror Number 30?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: What can you tell me?

4 THE PROSPECTIVE JUROR: So I'm aware of who this
5 individual is in the media. From what I understand, and
6 correct me if I'm wrong, this is the man who raised the price
7 of EpiPen.

8 THE COURT: Well, the media -- he's not involved
9 with EpiPens, but there have been reports about pricing
10 pharmaceuticals.

11 THE PROSPECTIVE JUROR: Regardless. I'm aware of
12 that to an extent and I don't think I would be fair in this
13 case.

14 THE COURT: Well, the question is whether as a
15 juror -- there is an oath that will be given to you later to
16 decide this case based only on the evidence presented at this
17 trial and to apply the law as I instruct you. The question
18 for you is whether, given what you have heard in the media,
19 could you be fair and open-minded to both sides as you listen
20 to the evidence and, ultimately, decide the case based only on
21 that evidence at trial and the ignore whatever else you have
22 heard about this gentleman.

23 THE PROSPECTIVE JUROR: I could be fair with the
24 evidence, yes.

25 THE COURT: Could you decide the case based only on

Side Bar

29

1 the evidence?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: And put out of your mind what you have
4 heard about him in the media?

5 THE PROSPECTIVE JUROR: When you ask it the second
6 way, no.

7 THE COURT: Okay. Please explain that to us because
8 all of us want to make sure that you have --

9 THE PROSPECTIVE JUROR: I just -- I'm not sure. I
10 don't know the details yet, so I'm not sure if I would be
11 able -- I might be biased against the individual.

12 THE COURT: Because on what you have read?

13 THE PROSPECTIVE JUROR: Right.

14 THE COURT: All right. So you would not be able to
15 divorce what you have heard in the media about him from --

16 THE PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: -- what the evidence is at the trial?

18 THE PROSPECTIVE JUROR: Right.

19 THE COURT: Please step just over to the side.

20 (Prospective juror leaves side bar.)

21 MR. BRAFMAN: We challenge the juror for cause.

22 THE COURT: Any objection? This is Juror Number 30.

23 MS. KASULIS: No objection.

24 MS. SMITH: I believe she's 29.

25 MR. BRAFMAN: No, she's 30.

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Side Bar

30

1 (Prospective juror joins side bar.)

2 THE COURT: Ma'am, we are going to excuse you from
3 this panel. You should go back to the jury room and tell them
4 you have been excused but you are available to sit on some
5 other case.

6 THE PROSPECTIVE JUROR: Okay.

7 THE COURT: Thank you for your candor.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Is there anyone else in the first three
11 rows?

12 All right. Just so you know, ladies and gentlemen,
13 when a juror has been excused, they are not excused from jury
14 duty.

15 Juror Number Four.

16 (Side bar continues; prospective juror joins.)

17 THE COURT: Have a seat, sir. Juror Number Four?

18 THE PROSPECTIVE JUROR: Yes. I no feel very
19 comfortable with my English.

20 THE COURT: How long have you been in this country?

21 THE PROSPECTIVE JUROR: Ten years.

22 THE COURT: How many years?

23 THE PROSPECTIVE JUROR: Ten.

24 THE COURT: And what do you do for a living?

25 THE PROSPECTIVE JUROR: I working -- I live in

1 New York now three year. After, I live in Miami. I working
2 from one company from Venezuela, freight forward.

3 THE COURT: A freight forwarding company in
4 Venezuela. Okay. Do you have occasion to speak to your
5 colleagues in English?

6 THE PROSPECTIVE JUROR: I learn English but
7 basically, not to take action in this case. That's the
8 problem. I come in, I can ask, I can speak English very
9 little. Not for this.

10 THE COURT: Do you understand English?

11 THE PROSPECTIVE JUROR: A little.

12 THE COURT: And in the case of your freight
13 forwarding work, do you converse with other members of the
14 public, customers?

15 THE PROSPECTIVE JUROR: In Spanish.

16 THE COURT: Only in Spanish?

17 THE PROSPECTIVE JUROR: Yes. We working in Miami.
18 The company send the freight forwarding -- we working in Miami
19 from Venezuela to send things to Venezuela. I know English
20 but not for this. Sorry. I want to stay.

21 THE COURT: Did you ever study English?

22 THE PROSPECTIVE JUROR: I studied the basic.

23 THE COURT: How many years did you study?

24 THE PROSPECTIVE JUROR: Two years of Miami college.

25 THE COURT: And are you having difficulty

Side Bar

32

1 understanding what I have said so far?

2 THE PROSPECTIVE JUROR: I understand a little thing.
3 I want to no -- I no want to -- when you asked me in there, I
4 no can ask, say anything. I don't want to excuse. I want to
5 learn, know that.

6 THE COURT: Okay. Let me just have you step over
7 there, sir.

8 (Prospective juror leaves side bar.)

9 MR. BRAFMAN: Your Honor, this case is going to
10 involve more than just basic English.

11 THE COURT: I know.

12 MR. BRAFMAN: I think we have to challenge him for
13 cause.

14 MS. KASULIS: No objection.

15 MS. SMITH: No.

16 THE COURT: All right. I mean, we do have a lot of
17 jurors often that come and say this and they are speaking
18 English in their regular life, but I will excuse him because I
19 do agree, there's some complex information that will be
20 discussed.

21 MR. BRAFMAN: Thank you.

22 (Prospective juror joins side bar.)

23 THE COURT: Sir, I am going to excuse you but I
24 would ask you to please go back to the jury room and tell them
25 you are available to sit on some other case.

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Side Bar

33

1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: Thank you.

3 THE PROSPECTIVE JUROR: Thank you.

4 (Prospective juror excused.)

5 THE COURT: Is there anyone else in the first three
6 rows to my left?

7 All right. Let's talk about the folks in the first
8 row in front of me.

9 You are Juror Number 40. Come on up, sir.

10 (Side bar continues; prospective juror joins.)

11 THE PROSPECTIVE JUROR: Good morning.

12 THE COURT: Good morning. How are you?

13 THE PROSPECTIVE JUROR: I'm fine.

14 THE COURT: All right. What can you tell us?

15 THE PROSPECTIVE JUROR: Well, I don't think I can be
16 fair and impartial based on the media coverage. I saw the
17 case about the prescription medicine, there were price
18 increases. I'm taking prescription medication. I would be
19 upset if it went up by 1,000 percent. I saw the testimony on
20 TV to Congress and I saw his face on the news last night. So,
21 by the time I came in and sat down and he turned around, I
22 knew who it was and I felt immediately I was biased. So I
23 don't feel that I can be, you know, honest and, you know, to
24 the defendant. I would hate to be in a situation where I'm
25 prejudiced by what I know.

Side Bar

34

1 THE COURT: It is extremely important that every
2 juror maintain an open and fair state of mind toward both
3 sides throughout this case.

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: So, the question I have for you is
6 whether you could put aside anything you may have heard about
7 this gentleman in the media and what you have heard about this
8 gentleman in the media has nothing to do with the issues in
9 this case.

10 Could you put that out of your mind and decide this
11 case based only on the evidence at this trial?

12 THE PROSPECTIVE JUROR: Honestly, at this point, I
13 don't think that I could.

14 THE COURT: All right. I will ask you to step over
15 to the side.

16 (Prospective juror leaves side bar.)

17 MR. BRAFMAN: We challenge Juror Number 40 for
18 cause, Your Honor.

19 MS. SMITH: No objection.

20 THE COURT: All right.

21 (Prospective juror joins side bar.)

22 THE COURT: Sir, we are going to excuse you.

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: We will ask you to go back to the jury
25 room and tell them you are available to sit on some other

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1 case.

2 THE PROSPECTIVE JUROR: All right. Thank you.

3 (Prospective juror excused.)

4 THE COURT: So what I'm going to do is we're going
5 to start moving jurors, starting at number 42 into the various
6 spots. All right. And I will ask them as I call the numbers
7 whether their answers to my questions would be yes and if so,
8 they will come directly here.

9 We are the starting at number 42. Is that
10 consistent with your notes everybody?

11 MR. BRAFMAN: And you'll announce where 42 is going
12 to be sitting, what their new number is?

13 THE COURT: Yes. They will go to Number One.

14 MS. KASULIS: What happened to 41?

15 THE COURT: Because we're missing number 23, we had
16 to move.

17 MS. KASULIS: Thank you.

18 (In open court.)

19 THE COURT: All right. Juror Number 42, are you in
20 the room?

21 Yes, ma'am. Would your answers to my questions have
22 been "yes"?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: Would you have answered "yes" to any of
25 my questions so far?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: All right. Please go to the seat that
3 was previously occupied by Juror Number One. It's in the
4 front row on the left, the far left. Thank you.

5 (Continued on next page.)
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1 (Continuing)

2 (In open court.)

3 THE COURT: Juror No. 43, would your answers to any
4 of my questions be yes that I've asked so far? No?

5 So I will ask you, ma'am, to please go sit in the
6 seat that was previously occupied by Juror No. 4, which is on
7 the front row. You'll see the label on the seat.

8 Juror No. 44, would your answers to my questions
9 have been yes? No?

10 All right. Let me ask you, then, to please go sit
11 in the seat that was previously occupied by Juror No. 17,
12 which should be in the second row up, and I'll point you to
13 the seat. Thank you.

14 Juror No. 45, sir, would your answers to my
15 questions have been yes to any of those questions?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: Let me ask you, then, to sit in the seat
18 previously occupied by Juror No. 18.

19 (Sidebar continues.)

20 THE COURTROOM DEPUTY: Would it be easier for all of
21 you if I now move -- since we're missing No. 23, I think we
22 should just leave that vacancy. Wouldn't it be easier to
23 conceptualize who is here and who is not, rather than shift
24 people?

25 I was going to call the next person and put them in

Sidebar

38

1 Seat 25.

2 MR. BRAFMAN: Okay.

3 MS. KASULIS: Yes.

4 (In open court.)

5 THE COURT: Juror No. 46, would your answers to my
6 questions have been yes? Okay. Please come up here.

7 (Sidebar continues; prospective juror joins.)

8 THE COURT: No. 46, yes, ma'am. Can you tell us,
9 what is it that you said you'd have yes answers to some of my
10 questions?

11 THE PROSPECTIVE JUROR: Yes. Basically, I heard
12 about it in the news. And I take care of my family that's
13 terminally ill, so I have very strong opinions about
14 healthcare and medicine.

15 THE COURT: Well, ma'am, everybody has opinions
16 about issues of importance in our society today, our
17 healthcare and other issues.

18 This case does not concern pharmaceutical pricing.
19 And the question that you must answer for us, if you could,
20 please, to the best of your honest ability, is whether you
21 could maintain a fair and open mind to both sides throughout
22 this trial and decide this case based only on the evidence
23 presented in this trial and apply the law as I instruct you.

24 THE PROSPECTIVE JUROR: Most likely not. I can't.
25 I'm just too clouded by having family members die of terminal

Sidebar

39

1 illnesses. It wouldn't be fair. Plus, I'm a paralegal.

2 THE COURT: Well, that's not disqualifying.

3 THE PROSPECTIVE JUROR: It's not disqualifying, I
4 understand that.

5 I don't think in this instance I could keep an open
6 mind.

7 THE COURT: Let me have you step back.

8 (Prospective juror leaves sidebar.)

9 MR. BRAFMAN: We would challenge No. 46 for cause.

10 MS. KASULIS: No objection.

11 (Prospective juror joins sidebar.)

12 THE COURT: Ma'am, you're going to be excused from
13 this case. Please go back to the jury room. Maybe you can
14 sit on another case.

15 THE PROSPECTIVE JUROR: Okay. Thank you.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Juror No. 47, ma'am, would your answers
19 to any of my questions be yes?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Please come up.

22 (Sidebar; prospective juror joins.)

23 THE COURT: Yes, ma'am.

24 THE PROSPECTIVE JUROR: I know he's the most hated
25 man in America. And in my opinion, he equates with Bernie

1 Madoff with the drugs, for women, pregnant women, going from
2 \$15 to \$750.

3 My parents are in their eighties. They're
4 struggling to pay for their medication. My mother was telling
5 me yesterday how my father's cancer drug is \$9,000 a month.

6 So, I can't be impartial, I'm sorry.

7 THE COURT: This case does not concern anything
8 related to pharmaceutical pricing, as reported in the media in
9 relation to this gentleman. The case is going to come before
10 you on evidence that you must consider fairly and with an open
11 mind.

12 And the question is whether you can set aside
13 anything that you might have heard or any opinions you might
14 have formed about the Defendant with regard to what you heard
15 in the media and decide with an open and fair mind to both
16 sides the issues in dispute based only on the evidence that
17 comes before you at the trial.

18 THE PROSPECTIVE JUROR: I would find that difficult.

19 THE COURT: All right. And that's based on your
20 parents' experience with medication?

21 THE PROSPECTIVE JUROR: It's based on people work
22 very hard for their money. He defrauded his company and his
23 investors and that's not right.

24 THE COURT: Let me ask you to step back over to the
25 side, please.

Sidebar

41

1 (Prospective juror leaves sidebar.)

2 MR. BRAFMAN: I'd challenge her for cause although
3 it would present a very interesting professional challenge to
4 try and convert her. Challenge her for cause twice.

5 THE COURT: We'll grant the application without
6 objection from the Government. Juror No. 47 is excused.

7 (Prospective juror joins sidebar.)

8 THE COURT: Ma'am, we're going to excuse you.
9 Please go down to the jury room where you started this
10 morning. Tell them you may be able to sit on some other case.
11 Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Juror No. 48, would any of your answers
15 to my questions have been yes?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: Please, then, take the seat of Juror No.
18 25. It's on the rows to my left.

19 (Sidebar continues.)

20 MR. AGNIFILO: 48 is 25.

21 MS. SMITH: Your Honor, the Government just wants to
22 put on the record that if the Defendant takes the stand and
23 testifies, it is possible that some of this information opens
24 the door to this.

25 THE COURT: Okay.

1 MS. SMITH: It might come up on cross-examination.
2 So, we're wondering in terms of the instruction to the
3 jurors -- and, obviously, see what the defense says -- that it
4 be that the charges in the case are unrelated to that reported
5 conduct.

6 Because I just don't want to say it will never come
7 up. It's obviously not part of our case-in-chief, but I don't
8 know how the door might be open or if the Defendant testifies.

9 THE COURT: If I haven't made that clear enough, I
10 will do so.

11 MR. BRAFMAN: Judge, if someone is in the
12 challenge-for-cause arena, I'm not certain we need to belabor
13 the issue because we would strenuously object. And,
14 hopefully, that never comes in, but I think she makes a good
15 point. But I'm not certain we need to alert the whole panel
16 about that.

17 MS. SMITH: No, I'm not saying that. I guess I'm
18 saying in the sense someone says they can be fair, that they
19 don't think that it's never potentially going to come up at
20 trial.

21 THE COURT: I think the only fellow who said
22 anything that has been maintained was the financial advisor.
23 He wasn't really talking about drug pricing at all.

24 MS. SMITH: I agree. I just wanted to put that out
25 there.

Sidebar

43

1 THE COURT: Okay. Thank you.

2 I think the only other seat we need to fill right
3 now is Seat No. 30, correct?

4 MR. SRINIVASIN: Right.

5 (In open court.)

6 THE COURT: Juror 49, would your answers to any of
7 my questions have been yes?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: I'm going to ask you to go to the seat
10 previously occupied by Juror No. 30, which is in the last row
11 on the far right.

12 Juror No. 50, ma'am, would your answers to any of my
13 questions have been yes?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: All right. Please go to the seat
16 previously occupied by Juror No. 40.

17 (Sidebar continues.)

18 THE COURT: Do we have 40 now?

19 MS. ZELLAN: Except for 23.

20 THE COURT: So perhaps I should move Juror 41 into
21 Seat 23. Would that be too confusing for you?

22 MS. SMITH: No, that's okay.

23 (In open court.)

24 THE COURT: Juror 41, would your answers to any of
25 my questions have been yes?

Sidebar

44

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Please go to Seat No. 23. It's on the
3 left. There's a tag with Seat 23 on it.

4 (Sidebar continues.)

5 THE COURT: I think we have everybody in 40 seats,
6 right?

7 THE LAW CLERK: 41 went to 23.

8 THE COURT: Do you want to begin with the
9 questioning now?

10 MR. BRAFMAN: Yes.

11 MS. KASULIS: Yes.

12 THE COURT: All right. Thank you.

13 (Sidebar ends; in open court.)

14 THE COURT: Thank you for bearing with me.

15 Knowing that the trial is scheduled to begin
16 tomorrow morning and last at most six weeks -- they're
17 projecting more likely four to six -- is there anyone who
18 would find it extremely burdensome to serve on this jury?

19 As you know, I recognize that jury service may be
20 inconvenient for some, if not all, of you. But you must ask
21 yourself whether serving on this jury would be so much more
22 inconvenience or burdensome for you than for anyone else.

23 You should also ask yourself what attitude you would
24 want jurors to have if you or someone you care deeply about
25 were to be tried by a jury. The right to a trial by jury is a

Sidebar

45

1 fundamental Constitutional right and you should bear in mind
2 the sacrifices that were made throughout our country's history
3 to preserve and defend this right in our Constitution. Jury
4 service is a critical duty of every citizen.

5 Is there anyone, back to my question, who would find
6 jury service to be unduly inconvenient or burdensome?

7 (Pause in proceedings.)

8 THE COURT: I'll just advise all of you that if you
9 are excused from this panel, you will be sent back to the jury
10 room for possible selection on some other trial that may not
11 take this amount of time.

12 I think Juror No. 2 had his hand up. One moment,
13 please.

14 We'll go to sidebar before we hear from you.

15 (The following occurred at sidebar.)

16 MS. SMITH: Your Honor, just for the record, we're
17 suggesting that we do these at sidebar because to the extent
18 that someone gives an explanation and you either excuse or
19 don't excuse them, it gives other people ideas.

20 THE COURT: That's the problem.

21 MS. SMITH: If they have a good excuse, obviously
22 they'll be excused. But if you decide not to excuse somebody,
23 you don't want to give them a sense of what you'll excuse.

24 THE COURT: Is that all right with everyone?

25 MR. AGNIFILO: Yes.

Sidebar

46

1 THE COURT: I'm trying to do as much as I can in the
2 open. We will examine Juror No. 2 at sidebar.

3 (In open court.)

4 THE COURT: Juror No. 2, would you please come to
5 sidebar?

6 (Sidebar; prospective juror joins.)

7 THE COURT: Yes, sir.

8 THE PROSPECTIVE JUROR: I have a scheduled vacation
9 starting the 3rd through the 10th. And on the 14th, I have a
10 meeting with my surgeon. If I could be pushed out further...

11 THE COURT: I wouldn't want you to the do anything
12 to jeopardize your medical condition by postponing an
13 examination or anything like that.

14 And you have a scheduled --

15 THE PROSPECTIVE JUROR: Scheduled vacation the 3rd
16 through the 10th.

17 THE COURT: And are you going outside the state?

18 THE PROSPECTIVE JUROR: Yes. We're going to
19 Vermont.

20 THE COURT: Let me ask you to step just over there,
21 please.

22 (Prospective juror leaves sidebar.)

23 MR. BRAFMAN: I have no objection, Judge, if you
24 want to excuse the juror.

25 MS. KASULIS: Okay.

Sidebar

47

1 (Prospective juror joins sidebar.)

2 THE COURT: Sir, we'll excuse you. I'd ask you to
3 go down to the jury room and see if there's some other case
4 where you can be of service.

5 THE PROSPECTIVE JUROR: I apologize for any
6 inconvenience.

7 THE COURT: No problem. Everyone gets a vacation.
8 (Prospective juror excused.)

9 MR. KAPLAN: Not everyone, your Honor.

10 THE COURT: Me either. No weekends either, thanks
11 to you guys.

12 (In open court.)

13 THE COURT: Who else had their hand up?
14 Juror No. 3, please come to sidebar.

15 (Sidebar continues; prospective juror joins.)

16 THE COURT: Yes, ma'am.

17 THE PROSPECTIVE JUROR: It would be inconvenient
18 because I don't believe -- I can't be impartial and convict
19 anyone and it would bother me. I don't think I could really
20 convict someone of any crime.

21 Also, I have my son in several incidences where he
22 was pulled off and thrown into jail and I don't feel
23 comfortable with stuff like that because I feel it's wrong.

24 And religiously, I'm not able to judge anyone.

25 THE COURT: Your religion forbids you from judging

Sidebar

48

1 anyone.

2 THE PROSPECTIVE JUROR: Yes, because I believe you
3 can't judge someone if you are not there and you don't know
4 that they commit a crime.

5 THE COURT: Well, our system asks jurors to decide
6 what happened or what the facts are based only on the evidence
7 at the trial.

8 THE PROSPECTIVE JUROR: I know. But evidence,
9 people could see things but it doesn't have to be true.

10 THE COURT: That's why we have jurors decide who to
11 believe and who not to believe.

12 THE PROSPECTIVE JUROR: I don't think I'd be able to
13 do that. I know so.

14 THE COURT: Let me ask you to step over to the side,
15 please.

16 (Prospective juror leaves sidebar.)

17 MR. BRAFMAN: Why don't we give the Government this
18 challenge for cause?

19 MS. KASULIS: We challenge, Judge.

20 THE COURT: No objection from the defense?

21 MR. BRAFMAN: No.

22 THE COURT: We'll dismiss Juror No. 3.

23 (Prospective juror joins sidebar.)

24 THE COURT: All right, ma'am, we're going to excuse
25 you. And I'd ask you to just go report back to the jury

Sidebar

49

1 service room.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: I think you have a religious prohibition
4 that doesn't allow you to serve. You should let the jury
5 people know that. But I'll excuse from you this panel in any
6 event.

7 THE PROSPECTIVE JUROR: Thank you.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Who else in row one to my left?
11 Juror No. 5, come up, please.

12 (Sidebar continues; prospective juror joins.)

13 THE COURT: Have a seat. Yes, ma'am?

14 THE PROSPECTIVE JUROR: I'm in the middle of a job
15 search. So, being on trial, I won't be able to go on
16 interviews. And, in fact, I have a potential employer waiting
17 on timing from me now.

18 THE COURT: Waiting to interview you?

19 THE PROSPECTIVE JUROR: Yeah, uh-huh, yeah.

20 So, if it starts tomorrow, I don't know when I would
21 go on the interviews.

22 THE COURT: Well, it's a five- to six-week trial.

23 THE PROSPECTIVE JUROR: So...

24 THE COURT: What kind of job are you looking for?

25 THE PROSPECTIVE JUROR: Manage payroll department.

Sidebar

50

1 I was laid off in May and I've been interviewing,
2 you know, as the jobs come up. So, you know, if I was to miss
3 a few jobs, once they hire, they hire and that's the end of
4 it.

5 THE COURT: Understood. Let me ask you to step just
6 over to the side, please.

7 THE PROSPECTIVE JUROR: Sure. Thank you.

8 (Prospective juror leaves sidebar.)

9 THE COURT: I don't want to impair her ability to
10 find a job.

11 MR. BRAFMAN: You need to do it, Judge.

12 THE COURT: I'm going to excuse Juror No. 5 without
13 objection.

14 (Prospective juror joins sidebar.)

15 THE COURT: Ma'am, we'll excuse you from this panel.
16 You can tell them that you're excused given your
17 circumstances. Let them know and they'll give you a sheet of
18 paper and give you instructions.

19 THE PROSPECTIVE JUROR: Thank you so much.

20 (Prospective juror excused.)

21 (In open court.)

22 THE COURT: Who else had their hand up on row one?
23 Juror No. 6, please come up.

24 (Sidebar continues; prospective juror joins.)

25 THE COURT: Hello, Juror No. 6. What is your issue?

1 THE PROSPECTIVE JUROR: The company I work for, I
2 only have a limited amount of paid time off and I already have
3 vacations for the summer for my family scheduled.

4 THE COURT: When?

5 THE PROSPECTIVE JUROR: First week of August and
6 then in November for Thanksgiving.

7 But that's, again, very limited amount of paid time
8 off. My company covers the first two weeks of trial for jury
9 duty. After that, it's up to me to make up my time.

10 THE COURT: What do you do, sir?

11 THE PROSPECTIVE JUROR: I'm a structural engineer.

12 THE COURT: Is there any way you can work during the
13 weekends?

14 THE PROSPECTIVE JUROR: No, because it's primarily
15 based on projects that are lined up. So, I can't work
16 overtime unless it's allowed for.

17 THE COURT: So, you would only be paid for the first
18 two weeks?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Would your company possibly be persuaded
21 if I were to call them and asked them to continue compensating
22 you?

23 THE PROSPECTIVE JUROR: I've asked and you can try,
24 but they have an actually very strict policy. I looked up and
25 spoke with HR before this process.

Sidebar

52

1 THE COURT: Two weeks of jury service and that's it.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Would you please step over to the side?

4 (Prospective juror leaves sidebar.)

5 THE COURT: All right. I don't know that this

6 gentleman should be without funds for himself and his family.

7 MR. BRAFMAN: I think we agree, Judge.

8 THE COURT: I will excuse him, then.

9 (Prospective juror joins sidebar.)

10 THE COURT: Sir, why don't you go downstairs and

11 tell them that you may be available to sit on a trial that

12 does not last more than two weeks. And you're excused from

13 this one.

14 THE PROSPECTIVE JUROR: Thank you.

15 THE COURT: Thank you.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: All right, anyone else on the first row?

19 Juror No. 8, come up on, sir.

20 (Sidebar continues; prospective juror joins.)

21 THE COURT: You're Juror No. 8?

22 THE PROSPECTIVE JUROR: It would be strictly a

23 financial issue if we were to meet every day for four to six

24 weeks. I work for a very small company where I'm the only

25 employee. My employer would not be able to afford to pay my

Sidebar

53

1 salary and a replacement, nor would I be able to live off the
2 \$40 a day.

3 THE COURT: What do you do, sir?

4 THE PROSPECTIVE JUROR: I'm a manager of a prop
5 house.

6 THE COURT: A what?

7 THE PROSPECTIVE JUROR: Prop house, for a
8 photography studio.

9 THE COURT: You're the only employee?

10 THE PROSPECTIVE JUROR: I'm the only full-time
11 employee.

12 THE COURT: There's no one else that could be asked
13 to fill in during the time you're on duty?

14 THE PROSPECTIVE JUROR: They could, but my employer
15 would not be able to afford to hire that person and pay me as
16 well. And I would not be able to live off the \$40 a day. I'm
17 the sole provider for my family, which includes four people.

18 THE COURT: All right. Please step over there.

19 (Prospective juror leaves sidebar.)

20 THE COURT: Does anyone have an objection to
21 excusing Juror No. 8?

22 MR. BRAFMAN: Not by defense, your Honor.

23 MS. SMITH: No, your Honor.

24 (Prospective juror joins sidebar.)

25 THE COURT: Will you be compensated at all for any

Sidebar

54

1 jury duty?

2 THE PROSPECTIVE JUROR: I would not be.

3 THE COURT: At all.

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: You're excused. Go downstairs and tell
6 them you've been excused from this panel. Tell them what your
7 circumstances are and they'll give you guidance. Thank you.

8 THE COURT: Juror No. 8 is excused.

9 (Prospective juror excused.)

10 (In open court.)

11 THE COURT: Did Juror No. 9 have her hand up? Come
12 on up, ma'am.

13 (Sidebar continues; prospective juror joins.)

14 THE PROSPECTIVE JUROR: Hello, your Honor. I work
15 for Citigroup, that's been outsourcing jobs out of New York.
16 And I have no doubt after not being in the office for four to
17 six weeks they'll realize that they don't need me here and I'm
18 going to lose my job. I fear for it every day.

19 THE COURT: Do they have a jury policy that
20 employees are --

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: This is Citigroup?

23 THE PROSPECTIVE JUROR: Yeah, I mean, they have a
24 policy, but it doesn't matter: When they realize that I'm not
25 in the office for six weeks, they'll take the opportunity to

Sidebar

55

1 relocate me.

2 THE COURT: Have you had any indication from your
3 employer --

4 THE PROSPECTIVE JUROR: Yes, yes, because they
5 posted a position for my boss in Florida, so I know it's only
6 a matter of time. It's very well known that they're moving as
7 many jobs as possible out of New York to cut costs.

8 THE COURT: Let me have you step over to the side
9 for one moment and I'll get back to you in one minute.

10 (Prospective juror leaves sidebar.)

11 MR. BRAFMAN: She's almost in tears.

12 MS. KASULIS: Yeah.

13 THE COURT: I think she'll be too distracted.

14 MS. KASULIS: I think that's right.

15 THE COURT: I'll excuse Juror No. 9 with the consent
16 of the parties.

17 (Prospective juror joins sidebar.)

18 THE COURT: Ma'am, I will excuse you from this
19 panel. You should go downstairs to the jury room and report
20 that you've been excused from this panel. You can explain
21 your circumstances and see what advice they give you, okay?

22 THE PROSPECTIVE JUROR: Okay, great. Thank you,
23 your Honor.

24 (Prospective juror excused.)

25 (In open court.)

1 THE COURT: Anyone else on row one?

2 Let's look at row two. Juror No. 11.

3 (Sidebar continues; prospective juror joins.)

4 THE COURT: Juror No. 11, hello.

5 THE PROSPECTIVE JUROR: My main concern is the
6 duration of the trial because of four to six. I have six
7 contracts under our --

8 THE COURT: Sorry, you'll have to speak up so
9 everybody can hear you.

10 THE PROSPECTIVE JUROR: This is critical, my job. I
11 manage six programs. This is the end of the fiscal year, so I
12 have the reports, the budget for the new upcoming contracts,
13 and all of that that's my concern. I wouldn't mind if the
14 trial would be, you know, shorter time.

15 Also, I have vacation time that I may take by the
16 21st.

17 THE COURT: Of July?

18 THE PROSPECTIVE JUROR: Yes. I don't know if the
19 trial would be done in four weeks. I wouldn't have a problem
20 with that, but those are my concerns.

21 THE COURT: We cannot promise that it's going to be
22 a four-week trial. These are estimates, obviously. So, four
23 to six weeks, five to six weeks.

24 The question I have for you is whether your employer
25 can ask others to fill in for your functions that you perform

Sidebar

57

1 to help you with the year end reports and other matters.

2 Would that be possible?

3 THE PROSPECTIVE JUROR: I think that they could.

4 THE COURT: For four to six weeks?

5 THE PROSPECTIVE JUROR: They would have to if I'm
6 not available. I will probably have to work from home also.

7 THE COURT: On the evenings or weekends?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Will your employer pay you for the time
10 that you're on jury service?

11 THE PROSPECTIVE JUROR: I was told maybe for two
12 weeks.

13 THE COURT: Do you know for sure what the policy is?

14 THE PROSPECTIVE JUROR: I don't know. I don't even
15 have my cell phone with me to check anything right now.

16 THE COURT: Understood. We did take those.

17 THE PROSPECTIVE JUROR: I think it's two weeks or 30
18 days. No more than that.

19 THE COURT: Let me have you step over to the side.
20 I'll get right back to you.

21 (Prospective juror leaves sidebar.)

22 THE COURT: All right. Any objections to excusing
23 this juror?

24 MR. BRAFMAN: No.

25 MS. KASULIS: No.

1 (Prospective juror joins sidebar.)

2 THE COURT: Ma'am, we're going to excuse you, but
3 just go downstairs and tell them that you're available to sit
4 on a case that's less than two weeks or whatever time frame
5 you're allowed.

6 THE PROSPECTIVE JUROR: Okay.

7 THE COURT: So Juror No. 11 is excused with the
8 consent of both parties.

9 (Prospective juror excused.)

10 (In open court.)

11 THE COURT: Looking again at the second row, is
12 there anyone?

13 All right. Juror No. 13, come on up, ma'am.

14 (Sidebar continues; prospective juror joins.)

15 THE COURT: Hi. Have a seat.

16 Yes, ma'am, what is your situation?

17 THE PROSPECTIVE JUROR: I'm traveling to Canada next
18 week for a family reunion and I won't be here. And I need to
19 report to work on July 10. I'm a single mom and have two
20 dependents, so I have to work on July 10.

21 THE COURT: All right. So Juror No. 13 has a family
22 reunion planned out of the country and also --

23 THE PROSPECTIVE JUROR: July 10 return to work. I
24 have two dependents, single parent.

25 THE COURT: Let me ask you to step to the side.

Sidebar

59

1 (Prospective juror leaves sidebar.)

2 THE COURT: All right. No objection to excusing
3 Juror No. 13; is that correct?

4 MR. BRAFMAN: No.

5 MS. KASULIS: No.

6 (Prospective juror joins sidebar.)

7 THE COURT: Ma'am, we will excuse you. Just go
8 downstairs to the juror room and tell them you've been
9 excused.

10 THE PROSPECTIVE JUROR: Thank you.

11 THE COURT: You can tell them your circumstances as
12 well.

13 (Prospective juror excused.)

14 MR. BRAFMAN: Is the Court going to be taking a
15 morning break?

16 The Defendant has to use the rest room. I don't
17 know about other jurors. If he's permitted just to step out
18 and come back. He's waiving his presence at sidebar anyway.

19 THE COURT: He can do that. Okay.

20 MR. BRAFMAN: Thank you.

21 THE COURT: If any of you need a break, let me know.

22 (In open court.)

23 THE COURT: Anyone else in the second row? Juror
24 No. 14.

25 (Continued on next page.)

Sidebar

60

1 (The following occurred at sidebar; prospective
2 juror present.)

3 THE COURT: Juror No. 14. You are number 14.

4 THE PROSPECTIVE JUROR: I live 50 miles away from
5 here. The distance is very far, also with a low mileage
6 lease. I have two young kids; one is going to music camp, the
7 other has day camp, so getting back and forth will be very
8 difficult as well. I also have two booked vacations in the
9 next six weeks, one in July and one in August.

10 THE COURT: We will not be on trial in August, I do
11 not believe. It's possible we will go into the first week in
12 August.

13 Where are you going in July?

14 THE PROSPECTIVE JUROR: Southern New Jersey, it is
15 my daughter's national competition, dance, both daughters,
16 actually.

17 THE COURT: I see. And is there anyone else besides
18 yourself to assist with childcare?

19 THE PROSPECTIVE JUROR: My wife.

20 THE COURT: Does she work?

21 THE PROSPECTIVE JUROR: She does. She's a school
22 psychologist. Every once in a while she gets called in for
23 the summer to do testing for the district.

24 THE COURT: Is there anybody else, neighbors or a
25 family member who could help you with transporting your

Sidebar

61

1 children?

2 THE PROSPECTIVE JUROR: We do have a neighbor.
3 She's, you know, moving around a lot, daily. My mother is
4 around. She works still full-time, so, at a hospital.

5 THE COURT: Okay. What town do you live in?

6 THE PROSPECTIVE JUROR: I'm in Brightwaters.

7 THE COURT: And so did you come into Brooklyn on the
8 train?

9 THE PROSPECTIVE JUROR: No, I drove.

10 THE COURT: You drove. Okay. Let me have you step
11 over to the chair.

12 THE PROSPECTIVE JUROR: Okay.

13 (Prospective juror leaves sidebar.)

14 MR. BRAFMAN: It's got to take two and a half hours
15 to drive in the morning from Brightwaters.

16 THE COURT: I think the district is committed --

17 MR. BRAFMAN: He can easily go to Central Islip.

18 THE COURT: We are a district and the district has
19 tried very hard to maintain the diversity of the district. It
20 looks like he does have other extenuating issues.

21 MR. BRAFMAN: We have no objection.

22 MS. ZELLAN: He has a booked prior vacation.

23 THE COURT: No objection?

24 MS. KASULIS: No.

25 THE COURT: All right. Juror No. 14 will be excused

Sidebar

62

1 without objection.

2 (Prospective juror present at sidebar.)

3 THE COURT: Sir, we are going to excuse you, but
4 perhaps you can go downstairs and let them know what your
5 circumstances are.

6 THE PROSPECTIVE JUROR: Sure. Thank you.

7 (Prospective juror excused.)

8 (In open court.)

9 THE COURT: Who else on the second row? Juror No.
10 17. Come to the side, please.

11 Juror No. 44 is sitting in the place that would have
12 been occupied by Juror No. 17, as she noted she is Juror No.
13 44.

14 (Prospective juror present at sidebar.)

15 THE COURT: Yes, ma'am.

16 THE PROSPECTIVE JUROR: I lost my voice. July 8th
17 is my brother's wedding. Surrounding the wedding, we rented a
18 beach house for the week before, so starting Friday until July
19 14th. Outside of that, though, I don't know if I would be a
20 good juror. My boyfriend, like two years, is a cop and I
21 don't know. I feel like I side with the side of the law
22 regardless of the case.

23 THE COURT: Well, I think given your personal
24 circumstances, let me talk to the other lawyers and see if
25 they have an objection --

Sidebar

63

1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: -- to excusing you because of your
3 family wedding. The other issues are issues that we would
4 want to certainly explore.

5 THE PROSPECTIVE JUROR: Yeah.

6 THE COURT: Just wait here.

7 Just over there, yes.

8 (Prospective juror leaves sidebar.)

9 THE COURT: Any objection to excusing No. 44?

10 MR. BRAFMAN: No objection.

11 MS. KASULIS: No objection.

12 THE COURT: Ma'am, we will excuse you. Please
13 report back to the jury room on the second floor.

14 THE PROSPECTIVE JUROR: Okay. Thank you.

15 (Prospective juror excused.)

16 (In open court.)

17 THE COURT: Who else on the second row? Juror No.
18 45, sitting in seat 18, come up. Thank you.

19 (Prospective juror present at sidebar.)

20 THE COURT: Hi. Have a seat.

21 THE PROSPECTIVE JUROR: Thank you.

22 THE COURT: What can you tell us?

23 THE PROSPECTIVE JUROR: Basically, I am a sole
24 proprietor. My company is one person, me, and you are asking
25 me to shut down my company for six weeks. I potentially

Sidebar

64

1 wouldn't have any clients left when I got back.

2 THE COURT: What do you do, sir?

3 THE PROSPECTIVE JUROR: IT.

4 THE COURT: IT. Okay, and you have no employees?

5 THE PROSPECTIVE JUROR: I do not. Just me.

6 THE COURT: Okay. Let me ask you to step over to
7 the side for a moment.

8 THE PROSPECTIVE JUROR: Sure. Thank you.

9 (Prospective juror leaves sidebar.)

10 MR. BRAFMAN: No objection, Your Honor.

11 THE COURT: No objection to excusing No. 45. Good?

12 MS. KASULIS: No objection.

13 THE COURT: Sir, we will excuse you. Please go down
14 to the second floor and tell them the circumstances and they
15 will give you whatever paperwork you need. Thank you.

16 THE PROSPECTIVE JUROR: Thank you.

17 (Prospective juror leaves sidebar.)

18 THE COURT: Was there anyone else? Juror No. 19,
19 come forward, please.

20 (Prospective juror present at sidebar.)

21 THE COURT: Hello again. Yes?

22 THE PROSPECTIVE JUROR: Okay, so, I'm a full
23 commission registered rep. I buy and sell securities on a
24 daily basis to generate my living, four to six weeks would
25 hurt.

Sidebar

65

1 THE COURT: The question is whether you could do
2 your work after the jury service concludes for the day or on
3 weekends, or are you only able to do your work --

4 THE PROSPECTIVE JUROR: During market hours.

5 THE COURT: Okay. And you are paid only on
6 commission?

7 THE PROSPECTIVE JUROR: I'm full commission.

8 THE COURT: And does your employer pay you while you
9 are on jury service?

10 THE PROSPECTIVE JUROR: No, I don't believe so.
11 This is my first time. It never came up.

12 THE COURT: You should find out. Some employers do,
13 especially financial-related employers will pay.

14 THE PROSPECTIVE JUROR: I can inquire.

15 THE COURT: Just so I understand, you earn only
16 commissions, you don't get a base salary?

17 THE PROSPECTIVE JUROR: No base salary. Only
18 commissions.

19 THE COURT: Let me ask you to just stand over there.
20 (Prospective juror leaves sidebar.)

21 MR. BRAFMAN: If he's full commission, they're not
22 going to have any problems with the earns --

23 THE COURT: I know. What we are doing is basically
24 deciding folks in his profession is never going to be able to
25 serve if they have this kind of arrangement, and that is

Sidebar

66

1 troubling. In any event, if there's no objection, I will
2 excuse Juror No. 19.

3 MS. KASULIS: No objection.

4 (Prospective juror present at sidebar.)

5 THE COURT: Sir, we are going to excuse you, but you
6 should go back to the second floor and report. Maybe there is
7 a shorter trial you can sit on.

8 THE PROSPECTIVE JUROR: Thank you.

9 (Prospective juror leaves sidebar.)

10 THE COURT: Juror No. 20, come up, please.

11 (Prospective juror present at sidebar.)

12 THE COURT: Have a seat. Yes, sir?

13 THE PROSPECTIVE JUROR: Hi, I have a wedding in
14 California with flights already paid for in three weeks from
15 the 18th to the 26th, that I am a member of the wedding party.
16 I'm sorry.

17 THE COURT: That's pretty compelling. Stand over
18 there, please.

19 (Prospective juror leaves sidebar.)

20 THE COURT: Any objection to excusing Juror No. 20?

21 MR. BRAFMAN: No, Your Honor.

22 MS. KASULIS: No, Your Honor.

23 (Prospective juror present at sidebar.)

24 THE COURT: Sir, if you would kindly go down to the
25 jury room and tell them you have been excused from this panel.

Sidebar

67

1 Maybe there is a shorter trial that you can serve on.

2 THE PROSPECTIVE JUROR: Thank you.

3 (Prospective juror excused.)

4 (In open court.)

5 THE COURT: Let's go to row three. Juror No. 25,
6 please come forward. You were formerly 48 and now you are 25.
7 This was Juror No. 25, now 48.

8 (Prospective juror present at sidebar.)

9 THE COURT: Yes, sir.

10 THE PROSPECTIVE JUROR: Okay, Your Honor, I have --
11 I have certain medical conditions, heart disease and high
12 blood pressure. Right now I am taking therapy for my
13 herniated disc, right.

14 THE COURT: Okay.

15 THE PROSPECTIVE JUROR: And I think the stress is
16 going to be too much for me. I wanted to get the experience
17 of coming for a week.

18 THE COURT: I appreciate that.

19 THE PROSPECTIVE JUROR: But five weeks, because I'm
20 still presently on the physical therapy for the back.

21 THE COURT: Well, I appreciate that. I wouldn't
22 want you to have any health consequences by serving. There
23 might be a trial that you can serve on that is shorter. This
24 is going to be five to six weeks.

25 THE PROSPECTIVE JUROR: That's why I...

Sidebar

68

1 THE COURT: I will excuse you. If you would kindly
2 go downstairs to the jury room and tell them you are excused
3 from this panel and see if there is a shorter trial for you.

4 THE PROSPECTIVE JUROR: Thank you, Your Honor.

5 (Prospective juror excused.)

6 THE COURT: I take it nobody is going to object.

7 MR. BRAFMAN: No objection.

8 MS. KASULIS: No objection.

9 THE COURT: I should have asked first. I'm sorry.
10 (In open court.)

11 THE COURT: In the last row, Juror No. 26, please
12 come up.

13 (Prospective juror present at sidebar.)

14 THE COURT: Hello. Please have a seat. Yes, ma'am.

15 THE PROSPECTIVE JUROR: Yes. Six weeks is too long
16 for me. I care for my mother and my husband and I take care
17 of my nine year-old and grandson. The length of time, my
18 daughter took off two weeks so she can stay for two weeks, but
19 she can't stay any longer.

20 THE COURT: Okay. She took off from her own job to
21 fill in for you on the jury?

22 THE PROSPECTIVE JUROR: Right.

23 THE COURT: There is no one else in your family or
24 friends or group that can help out?

25 THE PROSPECTIVE JUROR: No, I'm the only daughter

Sidebar

69

1 and I had to retire early to help take care of my mom.

2 THE COURT: All right. Let me ask you to step over
3 to the side there and we will get right back to you.

4 THE PROSPECTIVE JUROR: Okay.

5 (Prospective juror leaves sidebar.)

6 THE COURT: Does anyone object?

7 MR. BRAFMAN: If it saves time, I will speak just
8 for the defense, but if it is patently, obviously unfair, you
9 can excuse them.

10 THE COURT: I always do it that way. I just want my
11 record. I want my record.

12 MR. BRAFMAN: Okay thank you.

13 THE COURT: So we will excuse Juror No. 26 without
14 objection.

15 (Prospective juror present at sidebar.)

16 THE COURT: Ma'am, you are excused.

17 (Prospective juror leaves sidebar.)

18 THE COURT: Juror No. 27, please come forward.
19 Juror No. 27.

20 (Prospective juror present at sidebar.)

21 THE COURT: Have a seat, sir.

22 THE PROSPECTIVE JUROR: Currently, I'm dealing with
23 a potential pneumonia. I am in and out of the doctor. I'm
24 afraid it might interfere with me serving as a juror. I'm
25 supposed to go see him in a couple of weeks.

Sidebar

70

1 THE COURT: So you have been diagnosed with
2 pneumonia?

3 THE PROSPECTIVE JUROR: They're monitoring it. I
4 had pneumonia and it's starting to act up again, so they want
5 to monitor it.

6 THE COURT: So you have doctors' appointments
7 scheduled in the next six weeks?

8 THE PROSPECTIVE JUROR: Four to six weeks.

9 THE COURT: Let me ask you to step to the side.
10 (Prospective juror leaves sidebar.)

11 THE COURT: Does anybody object to excusing Juror
12 No. 27?

13 MS. KASULIS: No objection.

14 MR. BRAFMAN: No, Your Honor.

15 (Prospective juror present at sidebar.)

16 THE COURT: Sir, please go downstairs to the second
17 floor where you checked in, the jury room, and let them know.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Anyone in the last row? Juror No. 28,
21 please come forward.

22 (Prospective juror present at sidebar.)

23 THE COURT: Hello, ma'am. Have a seat.

24 THE PROSPECTIVE JUROR: Hi.

25 THE COURT: What would you like to tell us?

1 THE PROSPECTIVE JUROR: Right now, I don't have --
2 right now is medical issues. I'm not in my medical mind right
3 now because I am going to therapy for depression. I don't
4 have any capabilities to make any decisions right now. That's
5 what I wanted to say.

6 THE COURT: Okay.

7 THE PROSPECTIVE JUROR: I got papers.

8 THE COURT: I don't want to intrude, but you are
9 telling me your doctor has diagnosed you with depression?

10 THE PROSPECTIVE JUROR: Yes, I started seeing him
11 two weeks ago. Thursday, I have to see him again and then I
12 have to see a psychiatrist.

13 THE COURT: Ma'am, I am going to excuse you and ask
14 you to go down to the jury room and tell them you have been
15 excused.

16 THE PROSPECTIVE JUROR: To the jury room?

17 THE COURT: Just where you started out this morning.
18 You can tell them your medical issues and you will probably be
19 excused.

20 (Prospective juror excused.)

21 THE COURT: I take it if anyone objects, you will
22 let me know?

23 MR. BRAFMAN: Yes, your Honor.

24 MS. KASULIS: Yes.

25 (In open court.)

Sidebar

72

1 THE COURT: Anyone else on the third row? Juror No.
2 49, now you are 30.

3 (Prospective juror present at sidebar.)

4 THE COURT: Yes, ma'am, how are you?

5 THE PROSPECTIVE JUROR: Nervous.

6 THE COURT: Don't be nervous. It is important that
7 you feel free to be truthful and open about anything that you
8 need to tell us. Yes, ma'am.

9 THE PROSPECTIVE JUROR: Well, I feel really nervous
10 and intimidated by the Court. I get a lot of tension
11 headaches from being anxious, listening and paying attention,
12 being on the case for six weeks will be impossible for me.

13 THE COURT: Do you take medication for your
14 condition?

15 THE PROSPECTIVE JUROR: I have Fioricet as needed
16 and ibuprofen.

17 THE COURT: Does that medication affect your ability
18 to understand or be clear in your mind?

19 THE PROSPECTIVE JUROR: No, like paying attention,
20 when you have a headache, you don't really ... the lights
21 affect you.

22 THE COURT: If you are given breaks and also water
23 to take medication while you are serving, would that --

24 THE PROSPECTIVE JUROR: The medication helps
25 partially. It doesn't really relieve the headaches.

Sidebar

73

1 Basically laying down and relaxing. I am just being truthful.

2 THE COURT: I will ask you to step over here.

3 (Prospective juror leaves sidebar.)

4 THE COURT: Any objection to excusing Juror No. 49?

5 MR. BRAFMAN: No, Your Honor.

6 MS. KASULIS: No, Your Honor.

7 (Prospective juror present at sidebar.)

8 THE COURT: Ma'am, we will excuse you. Go back to
9 the jury room and let them know your situation.

10 (Prospective juror excused.)

11 (In open court.)

12 THE COURT: Is there anyone else on the rows to the
13 left?

14 Juror No. 32, would you come forward, please.

15 For the record, rest of you, please bear with us.

16 Thank you.

17 (Prospective juror present at sidebar.)

18 THE COURT: No. 32, how are you, sir?

19 THE PROSPECTIVE JUROR: I'm doing good.

20 THE COURT: What can you tell me?

21 THE PROSPECTIVE JUROR: You said four to six weeks?

22 THE COURT: Yes.

23 THE PROSPECTIVE JUROR: I'm going on vacation the
24 last week of July. I cancelled this week off. My mother
25 father got married 60 years ago. I cancelled this week so I

Sidebar

74

1 can do it in July. You said four to six weeks. That's the
2 only problem I have.

3 THE COURT: So you have a commitment?

4 THE PROSPECTIVE JUROR: Yes, because I am picking
5 them up to take them to Baltimore for a suite for the weekend
6 by themselves.

7 THE COURT: That's very nice. Let me just ask you
8 to step back over there very quickly. Don't go far.

9 (Prospective juror leaves sidebar.)

10 THE COURT: Any objection to excusing him?

11 MS. KASULIS: No.

12 MR. BRAFMAN: No.

13 (Prospective juror present at sidebar.)

14 THE COURT: We will excuse you. Please go
15 downstairs to the second floor where you checked in and let
16 them know.

17 (Prospective juror leaves sidebar.)

18 THE COURT: Anyone else in the front row? Juror No.
19 34. Come on up, please.

20 (Prospective juror present at sidebar.)

21 THE COURT: Hello.

22 THE PROSPECTIVE JUROR: How are you?

23 THE COURT: Have a seat. Yes, ma'am.

24 THE PROSPECTIVE JUROR: I -- it would be a hardship
25 with work. I only get paid two days by my employer.

Sidebar

75

1 THE COURT: Two days?

2 THE PROSPECTIVE JUROR: Two days. Also, I have an
3 aided number here from New York City, my daughter was just
4 injured on the subway and she doesn't drive. I mean, I was
5 with her. She can also only take Suffolk transportation, a
6 SCAD bus, but all the hours aren't conducive to the physical
7 therapy.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: On July 5th and 17th, I have
10 post-operative doctors' appointments for my surgery.

11 THE COURT: Okay, we will excuse you, ma'am.

12 THE PROSPECTIVE JUROR: Okay.

13 THE COURT: You have given us good reasons to excuse
14 you.

15 THE PROSPECTIVE JUROR: Thank you, Your Honor.

16 (Prospective juror leaves sidebar.)

17 THE COURT: Juror No. 34 is excused.

18 Was there anyone else on the front row? Juror No.
19 35, please come on up.

20 (Prospective juror present at sidebar.)

21 THE COURT: Juror No. 35, yes, sir.

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: What did you want to tell us?

24 THE PROSPECTIVE JUROR: I'm a restaurant manager, I
25 run all the daily operations on the business end, from

1 budgeting, inventory, staffing, hiring, firing, all that. I
2 deal with fraudulent transactions on ordering, stuff like
3 that, all in the restaurant. If I'm out for four to six
4 weeks, I'm not keeping up with staffing on my restaurant, my
5 business will deteriorate and lose customer base. It also
6 affects the quality of life for the other managers because we
7 are short staffed, the management team, even me being here, I
8 have to go to work after I get out just to help alleviate
9 them, because I have people randomly filling in.

10 THE COURT: You are one of many managers or several
11 managers?

12 THE PROSPECTIVE JUROR: We have four managers in the
13 store.

14 THE COURT: Okay. And you said your employer cannot
15 use other managers to fill in.

16 THE PROSPECTIVE JUROR: We are short staffed in
17 numerous stores. If I'm out for four to six weeks, we are
18 shorter. I write the schedule, I do the liquor ordering, all
19 that stuff.

20 THE COURT: Is there any objection to excusing Juror
21 No. 35?

22 MR. BRAFMAN: No, Your Honor.

23 MS. KASULIS: No.

24 THE COURT: You are excused. Go back to the jury
25 room and let them know.

Sidebar

77

1 (Prospective juror excused.)

2 (In open court.)

3 THE COURT: Anyone else in the row in front of me?

4 Juror No. 37, please come forward.

5 (Prospective juror present at sidebar.)

6 THE COURT: Yes. How are you?

7 THE PROSPECTIVE JUROR: Good.

8 THE COURT: Just speak up.

9 THE PROSPECTIVE JUROR: Okay, I'm nervous.

10 THE COURT: That's all right.

11 THE PROSPECTIVE JUROR: I want to let you know some
12 of the word you speak, I am not very understanding.

13 THE COURT: Some of the words?

14 THE PROSPECTIVE JUROR: There is a problem to be a
15 juror. I want to know the case clearly, is it possible to be
16 fair to everybody. I don't understand. If I don't know
17 understand, I don't want to pretend.

18 THE COURT: Have you been in this country for a
19 while?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: How long?

22 THE PROSPECTIVE JUROR: 11 years.

23 THE COURT: Have you studied English at all?

24 THE PROSPECTIVE JUROR: Two years.

25 THE COURT: What do you do for a living?

Sidebar

78

1 THE PROSPECTIVE JUROR: My job?

2 THE COURT: Yes.

3 THE PROSPECTIVE JUROR: I work in the doctor's
4 office.

5 THE COURT: Do you converse in English at all with
6 your patients or any --

7 THE PROSPECTIVE JUROR: Not really. So for me, the
8 solution is for liked ata entry.

9 THE COURT: Data entry, all right. So your concern
10 is you may not understand the evidence very well?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Let me ask you to step over to the side.
13 (Prospective juror leaves sidebar.)

14 THE COURT: There is no way to really know how her
15 English capacity is. I am assuming she probably understands
16 and speaks more than she says, but we won't know that.

17 MR. BRAFMAN: We don't have an objection for cause.

18 THE COURT: Do you want to excuse her then?

19 MS. KASULIS: Yes.

20 (Prospective juror present at sidebar.)

21 THE COURT: Ma'am, I will excuse you. I would ask
22 you to seriously consider serving on jury duty and working
23 always to improve your English skills because it is an
24 important service.

25 THE PROSPECTIVE JUROR: Yes. Thank you.

1 THE COURT: Where you checked in, just let them
2 know.

3 Juror No. 27 is excused.

4 (Prospective juror excused.)

5 THE COURT: Juror No. 38, come up, sir.

6 (Prospective juror present at sidebar.)

7 THE PROSPECTIVE JUROR: Hello.

8 THE COURT: What is your issue?

9 THE PROSPECTIVE JUROR: My five year-old daughter
10 has her last day in school on Wednesday. We were going to
11 start hanging out together before she has camp in two weeks.
12 Being here would necessitate spending large amounts of money
13 on childcare, blah, blah, blah.

14 THE COURT: Is there anyone else who can take care
15 of your child while you are serving?

16 THE PROSPECTIVE JUROR: I could find somebody at
17 thousand a week to watch her.

18 I also have a work contract in California that
19 starts I think in four weeks. I don't have my calendar on me.
20 It is in my phone. It's three and a half to four weeks.
21 Given the duration you said, it would make it difficult for me
22 to be here.

23 THE COURT: Just so I understand, there is nobody
24 else who could help you with your childcare before she goes to
25 camp?

Sidebar

80

1 THE PROSPECTIVE JUROR: My wife could quit her job.

2 THE COURT: I'm just asking.

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: Just step aside.

5 (Prospective juror leaves sidebar.)

6 THE COURT: Any objection to excusing Juror No. 38?

7 MR. BRAFMAN: No.

8 MS. KASULIS: No.

9 (Prospective juror present at sidebar.)

10 THE COURT: We will excuse you. Please go back to
11 the jury room and let them know that you have been excused.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Anyone else? Yes, ma'am. Juror No. 40
15 who used to be 50.

16 (Prospective juror present at sidebar.)

17 THE COURT: Yes, ma'am.

18 THE PROSPECTIVE JUROR: I have treatment for T-cell
19 lymphoma twice a week and missing 12 treatments would be --

20 THE COURT: Okay. No, we are not going to have
21 that. Then you are excused. Let me ask you this.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Have we gotten through everybody?

25 MS. SMITH: Yes.

Sidebar

81

1 THE COURT: Let me start calling more names and I
2 will ask if anyone's answers to my questions would be yes.

3 Juror No. 51, are you in the house? Would your
4 answers to my questions have been yes? Think back to all of
5 my questions.

6 No. Please take a seat of Juror No. 2.

7 THE COURT: Juror No. 52, would your answers to my
8 questions have been yes?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Please come up to sidebar.

11 (Prospective juror present at sidebar.)

12 THE COURT: Good morning. Juror No. 52, how are
13 you?

14 THE PROSPECTIVE JUROR: Good. How are you?

15 I can't be partial when I walked in here today and I
16 looked at both tables and looked right at him and in my head
17 that's a snake not knowing who he was. Maybe I have a sight
18 and I can't risk losing my job on that.

19 THE COURT: All right. You drew a conclusion about
20 this individual based on visual?

21 THE PROSPECTIVE JUROR: I just walked in and looked
22 right at him and that's a snake.

23 MR. BRAFMAN: That's a what?

24 THE PROSPECTIVE JUROR: Snake.

25 MR. BRAFMAN: Thank you.

Sidebar

82

1 THE COURT: So you don't believe that you could --

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: The question that I had is you don't
4 believe you could put aside your impressions?

5 THE PROSPECTIVE JUROR: No, you said securities
6 fraud. You said wire fraud, no.

7 THE COURT: All right. Let me ask you to step
8 aside.

9 THE PROSPECTIVE JUROR: Sure.

10 (Prospective juror leaves sidebar.)

11 MR. BRAFMAN: So much for the presumption of
12 innocence.

13 THE COURT: Challenging for cause?

14 MR. BRAFMAN: Yes, your Honor.

15 MS. KASULIS: Yes, your Honor.

16 THE COURT: We will excuse Juror No. 52.

17 (Prospective juror present at sidebar.)

18 THE COURT: We are going to excuse you and ask you
19 to go back to the central jury room and let them know you were
20 excused.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Juror No. 53, would you answers to my
24 questions be yes to any of my questions?

25 THE PROSPECTIVE JUROR: Yes.

Sidebar

83

1 THE COURT: Please come up to sidebar.

2 (Prospective juror present at sidebar.)

3 THE COURT: Hello, sir.

4 THE PROSPECTIVE JUROR: How are you doing?

5 THE COURT: Can you get up here okay?

6 THE PROSPECTIVE JUROR: I can but my leg is killing
7 me.

8 THE COURT: Please be careful. Tell me what you
9 would like to say about any of the answers you would have
10 answered yes to my questions.

11 THE PROSPECTIVE JUROR: The answer to the question I
12 don't understand and I don't feel comfortable.

13 THE COURT: You don't feel comfortable with what?
14 Do you mean physically comfortable?

15 THE PROSPECTIVE JUROR: Yeah.

16 THE COURT: Are you suffering from some ailment?

17 THE PROSPECTIVE JUROR: My knees and my back, couple
18 of days my work is lifting and bending.

19 THE COURT: Are you taking any medication to help
20 with your pain?

21 THE PROSPECTIVE JUROR: I called my doctor, but my
22 doctor is to is on vacation. Right now, I am getting a little
23 dizzy.

24 THE COURT: I'm sorry.

25 THE PROSPECTIVE JUROR: I'm on my diabetes pill.

Sidebar

84

1 THE COURT: I see. All right. Well, I don't want
2 your medical condition to suffer, sir. I am going to excuse
3 you.

4 THE PROSPECTIVE JUROR: I appreciate it very much.

5 THE COURT: Just please go back to the jury room
6 where you checked it in and tell them that you have been
7 excused. Thank you, sir. Take care.

8 THE PROSPECTIVE JUROR: Okay.

9 (Prospective juror excused.)

10 THE COURT: Juror No. 54, would your answers to my
11 questions be yes?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Please come here to sidebar.

14 (Prospective juror present at sidebar.)

15 THE COURT: Yes, ma'am, how are you?

16 THE PROSPECTIVE JUROR: Good morning. I work in
17 product development and I'm working on projects that are due
18 in the next two to three weeks and that would interfere with
19 that schedule.

20 THE COURT: Is there anyone else in your office who
21 could assist you or fill in for you?

22 THE PROSPECTIVE JUROR: No, not at this point.

23 THE COURT: What is it that you do at product
24 development?

25 THE PROSPECTIVE JUROR: I am a merchandiser. I work

Sidebar

85

1 on products with designers and the product is due in the next
2 couple of weeks, so I have to be there to work with them.

3 THE COURT: Okay. Thank you. Let me ask you to
4 step over to the side just for a moment.

5 (Prospective juror leaves sidebar.)

6 THE COURT: Is there any objection to excusing Juror
7 No. 54?

8 MS. KASULIS: No.

9 MR. BRAFMAN: No, Your Honor.

10 THE COURT: Ma'am, we will excuse you from this
11 panel. There might be a shorter trial. If you could please
12 head back to the jury room. Thank you.

13 (Prospective juror excused.)

14 THE COURT: Juror No. 54 is excused.

15 (In open court.)

16 THE COURT: Juror No. 55. Would your answers to any
17 of my questions be yes?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: Please come up to sidebar.

20 (Prospective juror present at sidebar.)

21 THE COURT: Hello, have a seat. Juror No. 55.

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: You have to speak so everyone can hear
24 you.

25 THE PROSPECTIVE JUROR: I am working as a pharmacist

1 in a hospital, so we always have staffing issues, so it is
2 hard for me to take off four to six week.

3 THE COURT: Well, there are other pharmacists who
4 could fill in for you if necessary; is that correct?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Do you get paid when you are on jury
7 duty?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: So your employer could find other
10 pharmacists to fill in for you?

11 THE PROSPECTIVE JUROR: If I have to, then they
12 will, yes.

13 THE COURT: All right. Is the pharmacy open 24/7 or
14 just during business hours?

15 THE PROSPECTIVE JUROR: 24/7.

16 THE COURT: So those two pharmacists could fill in?

17 THE PROSPECTIVE JUROR: I work in the day shift, so
18 they have to find somebody to cover me, but we just have like
19 short staff most days. Just for me to take four to six weeks
20 may be a concern, but if I have to serve, then I serve.

21 THE COURT: All right. So your employer would not
22 prohibit you from serving in terms of your employer's
23 resources and ability to find another pharmacist to fill in
24 for you; is that correct?

25 THE PROSPECTIVE JUROR: Repeat the question again.

Sidebar

87

1 THE COURT: Would your employer be able to find
2 another pharmacist to fill in for you while you are serving on
3 jury duty for four to six weeks?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: You would be paid during the time you
6 serve?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you. Can you step back for a
9 moment, please.

10 THE PROSPECTIVE JUROR: Sure.

11 (Prospective juror leaves sidebar.)

12 THE COURT: I am not inclined to excuse her. Does
13 anyone have a different view?

14 MR. BRAFMAN: No.

15 MS. KASULIS: No.

16 THE COURT: Ma'am, could you please go back to your
17 seat.

18 (Prospective juror leaves sidebar.)

19 THE COURT: Juror No. 55 is maintained.

20 Shall we move her up yet. She will be in seat
21 three.

22 (In open court.)

23 THE COURT: Juror No. 55, would you please go to
24 seat three. Go to seat three, please, to my left. Thank you.

25 Juror No. 56, would your answers to my questions be

Sidebar

88

1 yes?

2 THE PROSPECTIVE JUROR: No, Your Honor.

3 THE COURT: Then I will ask you, Juror No. 56, to
4 please go to seat No. 5. Thank you very much.

5 Juror No. 57, would your answers to my questions
6 have been yes, any of the questions?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: All right. I will ask you to go to seat
9 No. 6, please.

10 Juror No. 58, would your answers to my questions be
11 yes?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Please come up, sir.

14 (Prospective juror present at sidebar.)

15 (Continued on next page.)

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MDL

OCR

RPR

1 (The following occurred at side bar; prospective
2 juror joins.)

3 THE COURT: Juror Number 58, good morning.

4 THE PROSPECTIVE JUROR: Is it still morning?

5 THE COURT: It's noon.

6 THE PROSPECTIVE JUROR: Okay. Two issues. I just
7 had an attack. I have reactive hypoglycemia. It's under
8 control. I can control it though by carrying my sugar
9 packets.

10 THE COURT: Okay.

11 THE PROSPECTIVE JUROR: The other is you mentioned
12 the duration of the trial. It's not a big problem. I have
13 prepaid reservations in Florida on the 7th of August. Four
14 weeks, five weeks, I'd have no problem. I'd be honored to do
15 it.

16 THE COURT: I wouldn't want to tell you for sure
17 that you can go to your Florida vacation or event. The
18 parties are projecting between four to six weeks.

19 THE PROSPECTIVE JUROR: Right.

20 THE COURT: So we have to always assume six weeks.

21 THE PROSPECTIVE JUROR: Right.

22 THE COURT: So, would that present a problem?

23 THE PROSPECTIVE JUROR: Well, it would as far as the
24 timing of it because I don't know if I could extend the
25 reservations for the date of trial because it's already

Side Bar

90

1 prepaid. It's Disney World and they're tough.

2 THE COURT: Yes, they are. That's not such a happy
3 place all the time, is it? So why don't you step over to the
4 side for one moment, please.

5 (Prospective juror leaves side bar.)

6 MS. SMITH: I think he said August 7th?

7 THE COURT: Yes.

8 MS. SMITH: I think we should be fine for
9 August 7th.

10 THE COURT: We counted six weeks and it seems like
11 that should be all right.

12 MS. SMITH: It should be.

13 THE COURT: I just wouldn't want the jury to get
14 rushed.

15 MS. KASULIS: Or anxious.

16 MS. SMITH: I think the six weeks is the first week
17 in August.

18 THE COURT: All right. I think he is able to
19 control his medications.

20 MS. KASULIS: That was my only issue, could he
21 control the medication.

22 (Prospective juror joins side bar.)

23 THE COURT: Please come back.

24 We suspect you are able to make it to your Florida
25 vacation which is August 7th. Is that what you said?

CMH

OCR

RMR

CRR

FCRR

1 THE PROSPECTIVE JUROR: I leave Monday, August 7th,
2 Monday. I drive.

3 THE COURT: I think we expect that you will be able
4 to do that.

5 THE PROSPECTIVE JUROR: I just wanted to ask anyway.

6 THE COURT: No, that's all right. I don't want to
7 guarantee. So, I guess what I would say this evening is if
8 you are selected, that you see if you can definitely make
9 arrangements to bump it back, but I think --

10 THE PROSPECTIVE JUROR: It's refundable.

11 THE COURT: Okay. Good.

12 THE PROSPECTIVE JUROR: It's not a loss.

13 THE COURT: So, the other important question is your
14 hypoglycemia. Are you going to be able to maintain alertness
15 and feel --

16 THE PROSPECTIVE JUROR: Yes, I have Glu-Combo with
17 me all the time and I can test it while I'm sitting. I carry
18 four or five packets of raw sugar in my pocket.

19 THE COURT: We can always allow you to drink water.

20 THE PROSPECTIVE JUROR: I know it's happening when I
21 see 10 to 12 of you at a time, I have ten minutes before it
22 actually puts me in a coma.

23 THE COURT: Well, we don't --

24 THE PROSPECTIVE JUROR: Sorry.

25 THE COURT: We wouldn't want that to happen.

Side Bar

92

1 THE PROSPECTIVE JUROR: I know it's coming.

2 THE COURT: We'll make sure you're well cared for.

3 MR. BRAFMAN: Can we be heard just for a moment?

4 THE COURT: Yes.

5 Sir, I am going to ask you to just step away for one
6 moment.

7 (Prospective juror leaves side bar.)

8 MR. BRAFMAN: I assume you don't want us to
9 participate in the questioning?

10 THE COURT: No, but I will ask any other questions
11 that you have.

12 MR. BRAFMAN: Judge, I'm familiar with his
13 condition, not for me, but I have it for some family members
14 and the fact that he can see 12 of us for a period of time
15 until he gets his medication, this is a tough case. To sit
16 and pay attention to it and I just think the medication -- I
17 think his medical condition is going to keep him from being
18 able to concentrate. I'm not going to push the issue. I'm
19 asking Your Honor to be mindful that there are 50 other people
20 in the panel that are out there, maybe 70. So I just think
21 it's dangerous.

22 THE COURT: Well, of course I wouldn't want to
23 endanger him, but he seems to be well familiar with his
24 physical condition.

25 MR. BRAFMAN: He gets a ten minute head start and he

1 avoids a coma. Ten minute head start. I hate to be in the
2 middle of cross-examining someone when suddenly, the flag goes
3 up.

4 It's your call, Judge. I'm not going to fight you.

5 THE COURT: Does anyone have any views?

6 MS. KASULIS: No.

7 THE COURT: I don't want to jeopardize anyone's
8 health. Let me make sure he can manage it.

9 (Prospective juror joins side bar.)

10 THE COURT: Sir, come back. I'm sorry.

11 We are obviously concerned about your physical
12 condition and also wouldn't want you to have to get to a point
13 of crisis before you have to start, you know, medicating or
14 doing anything else. We would want you to -- well, you would
15 be able to have all of the medication on you and to drink
16 water and to ask for breaks.

17 THE PROSPECTIVE JUROR: Right.

18 THE COURT: But I don't want it to be anything that
19 would jeopardize your health in any way.

20 THE PROSPECTIVE JUROR: It doesn't.

21 THE COURT: Or have you in a pre-coma state.

22 THE PROSPECTIVE JUROR: It's only if I didn't take
23 care of myself and I'm keenly aware of that. You know, I mean
24 I drive to Florida and like I said, when I've -- it's
25 instantaneous where you can feel it coming on and I fall over

1 and I sit there and unless I take -- if I don't take the
2 medication, I start seeing multiple people, it takes 15 to
3 20 minutes to recover.

4 THE COURT: Oh, okay. I wouldn't want to lose your
5 attention during the trial.

6 THE PROSPECTIVE JUROR: I understand.

7 THE COURT: So, if it would be a 15-minute recovery
8 process after medication, probably I would be concerned that
9 you would perhaps risk a coma and also --

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: -- lose attention, so I will excuse you.

12 THE PROSPECTIVE JUROR: All right.

13 THE COURT: All right, sir. Thank you. Be well.

14 THE PROSPECTIVE JUROR: Thank you very much.

15 MR. BRAFMAN: Thank you, Judge.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Juror 59, would your answers to my
19 questions have been "yes"?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Please come up.

22 (Side bar continues; prospective juror joins.)

23 THE COURT: Have a seat, sir.

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: All right. Tell me what questions you

1 would have answered "yes" to.

2 THE PROSPECTIVE JUROR: I'm working for really small
3 architectural firm and I'm not getting paid I'm not working,
4 but also my boss is going on vacation in two weeks and he will
5 be gone for two weeks and we have projects that are ongoing
6 and without him and me on the job, we would lose the clients.

7 THE COURT: Okay. So, you are in a small
8 architecture firm, your boss is going on vacation, you are not
9 going to get paid and you need to complete your projects?

10 THE PROSPECTIVE JUROR: Yes. We got some ongoing
11 projects that have to be managed and we have some to be done.

12 THE COURT: When you say small office, how many
13 other architects?

14 THE PROSPECTIVE JUROR: There's one training.

15 THE COURT: Just a trainee?

16 THE PROSPECTIVE JUROR: There's just two of us.

17 THE COURT: Okay. All right. Let me just ask you
18 to step back for one second, please.

19 THE PROSPECTIVE JUROR: Sure.

20 (Prospective juror leaves side bar.)

21 THE COURT: I was going to excuse Juror Number 59 if
22 there is no objection.

23 MR. BRAFMAN: No objection.

24 MS. KASULIS: No objection.

25 (Prospective juror joins side bar.)

1 THE COURT: Sir, I will excuse you. Please go back
2 to the jury room. Let them know that you have been excused.

3 THE PROSPECTIVE JUROR: Thank you.

4 (Prospective juror excused.)

5 (In open court.)

6 THE COURT: Juror Number 60, would you have answered
7 "yes" to any of my questions?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Please come up, ma'am.

10 (Side bar continues; prospective juror joins.)

11 THE COURT: Yes, ma'am. Have a seat. How are you?

12 THE PROSPECTIVE JUROR: Fine.

13 THE COURT: Speak so everybody can hear you.

14 What questions would you have answered "yes" to?

15 THE PROSPECTIVE JUROR: Yes, I answer the question
16 is for the six weeks.

17 THE COURT: Yes, ma'am.

18 THE PROSPECTIVE JUROR: I am not going to be able to
19 attend the six weeks, I'm sorry, because my boss, she's doing
20 marketing and I supposed to see the little boy, take him to
21 school, to camp and perform my duties.

22 THE COURT: Okay.

23 THE PROSPECTIVE JUROR: For middle of July.

24 THE COURT: Okay.

25 THE PROSPECTIVE JUROR: So, I am so sorry.

Side Bar

97

1 THE COURT: That's all right, ma'am. That's all
2 right. Okay. So your work would not allow you to serve, is
3 that correct, your job?

4 THE PROSPECTIVE JUROR: I don't mean she's not
5 allowed me to.

6 THE COURT: Well, for four to six weeks.

7 THE PROSPECTIVE JUROR: Yes. I have to babysit. I
8 had him since three months and he doesn't want to stay with
9 nobody but me.

10 THE COURT: Okay. All right. Let me ask you just
11 to step to the back.

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: For one second.

14 THE PROSPECTIVE JUROR: So it's okay?

15 (Prospective juror leaves side bar.)

16 THE COURT: I'm going to excuse Juror Number 60
17 unless there are objections.

18 MR. BRAFMAN: No objections.

19 MS. KASULIS: No objection.

20 (Prospective juror joins side bar.)

21 THE COURT: Ma'am, go to the jury room and let them
22 know you have been excused.

23 THE PROSPECTIVE JUROR: Thank you.

24 (Prospective juror excused.)

25 (In open court.)

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1 THE COURT: Juror Number 61, would your answers to
2 my questions be "yes," to any of them?

3 THE PROSPECTIVE JUROR: Yes.

4 (Side bar continues; prospective juror joins.)

5 THE COURT: Hello, sir. How are you? Have a seat,
6 please.

7 All right. What questions would you have answered
8 "yes" to?

9 THE PROSPECTIVE JUROR: I won't be here for six
10 weeks. I just started working in the company and I'm the
11 breadwinner of the family.

12 THE COURT: You're what?

13 THE PROSPECTIVE JUROR: I'm the breadwinner for the
14 home. If I'm out for six weeks, I don't have a job.

15 THE COURT: What jobs are you doing?

16 THE PROSPECTIVE JUROR: I'm a tunnel worker.

17 THE COURT: You just started your job?

18 THE PROSPECTIVE JUROR: Yes. I was out for one
19 year, and I'll be in the Caribbean in the end of July.

20 THE COURT: End of July?

21 THE PROSPECTIVE JUROR: My daughter is getting
22 married.

23 THE COURT: Congratulations.

24 THE PROSPECTIVE JUROR: I have to be there for that.

25 THE COURT: Yes, you have to be there for that.

Side Bar

99

1 All right. I am going to excuse you. Go back to
2 the juror room and tell them you have been excused.

3 THE PROSPECTIVE JUROR: All right.

4 (Prospective juror excused.)

5 THE COURT: Juror Number 61 is excused. No
6 objection from either side?

7 MR. BRAFMAN: No objection.

8 MS. KASULIS: No objection.

9 (In open court.)

10 THE COURT: Juror Number 62, would you have answered
11 "yes" to any of my questions?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Come on up.

14 (Side bar continues; prospective juror joins.)

15 THE COURT: Have a seat. Yes, sir.

16 THE PROSPECTIVE JUROR: I question. My English is
17 not very good.

18 THE COURT: How long have you been in this country?

19 THE PROSPECTIVE JUROR: Almost, like, nine years.

20 THE COURT: Nine years? What do you do for a
21 living?

22 THE PROSPECTIVE JUROR: The restaurant.

23 THE COURT: You work in a restaurant?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: What do you do there?

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Side Bar

100

1 THE PROSPECTIVE JUROR: Chef.

2 THE COURT: You're a chef?

3 THE PROSPECTIVE JUROR: Yes. Basic English, my
4 English level very basic.

5 THE COURT: Did you ever study English?

6 THE PROSPECTIVE JUROR: Sometimes, my wife teach me
7 sometimes.

8 THE COURT: Okay. Do you speak English on the job?

9 THE PROSPECTIVE JUROR: Not really. Just a little
10 bit.

11 THE COURT: What kind of restaurant is it?

12 THE PROSPECTIVE JUROR: It's a Japanese restaurant.

13 THE COURT: All right. What language do you speak
14 to your colleagues in the restaurant? What language is spoken
15 in the restaurant?

16 THE PROSPECTIVE JUROR: We speak, like, sometimes
17 English, but we speak Chinese.

18 THE COURT: All right. Let me just ask you to step
19 back for a moment, please.

20 (Prospective juror leaves sidebar.)

21 THE COURT: Again, I'm not sure he really could not
22 follow the evidence given the nature of our conversation.
23 Does anybody want to have him excused based on language?

24 MR. BRAFMAN: I don't have any objection to excusing
25 him for cause.

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Side Bar

101

1 THE COURT: Any hesitation or concerns about his
2 English ability?

3 MS. KASULIS: Yes, I think we do have.

4 THE COURT: All right. We will excuse him then.

5 (Prospective juror joins side bar.)

6 THE COURT: Sir, we are going to excuse you. Please
7 go to the jury room and tell them you have been excused.

8 THE PROSPECTIVE JUROR: What?

9 THE COURT: Tell them in the jury room you have been
10 excused from this panel. Please work on your English because
11 I want you to serve as a juror in some future case. All
12 right?

13 THE PROSPECTIVE JUROR: You mean, you mean, I --

14 THE COURT: Go back to the jury room and tell them
15 you have been excused.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: Okay?

18 THE PROSPECTIVE JUROR: So outside, right?

19 THE COURT: Where you checked in this morning, go
20 back and tell them you have been excused.

21 THE PROSPECTIVE JUROR: All right. Thank you.

22 (Prospective juror excused.)

23 THE COURT: All right. I changed my view.

24 (In open court.)

25 THE COURT: Juror Number 63, would your answers to

Side Bar

102

1 any of my questions have been "yes"?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Please come up.

4 (Side bar continues; prospective juror joins.)

5 THE COURT: Please have a seat. Yes, ma'am.

6 THE PROSPECTIVE JUROR: On the 5th and the 11th, I
7 have appointments that I really can't miss and then from the
8 12th to the 16th, I had plans to go away for my graduation.

9 THE COURT: All right. Are you going out of town?

10 THE PROSPECTIVE JUROR: I am.

11 THE COURT: Your trip? You bought tickets already?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. And there is no way to
14 change your dates or your tickets?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Let me ask you to just step back
17 to the side.

18 THE PROSPECTIVE JUROR: Sure.

19 (Prospective juror leaves side bar.)

20 THE COURT: Any objection to excusing 63?

21 MR. BRAFMAN: No, Your Honor.

22 MS. KASULIS: No, Your Honor.

23 (Prospective juror joins side bar.)

24 THE COURT: Ma'am, just report down to the jury room
25 where you checked in this morning and tell them you have been

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1 excused.

2 THE PROSPECTIVE JUROR: All right. Thank you.

3 THE COURT: All right.

4 (Prospective juror excused.)

5 (In open court.)

6 THE COURT: Juror 64, would you have answered "yes"
7 to any of my questions?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Come on up, please.

10 (Side bar continues; prospective juror joins.)

11 THE COURT: Hi. Have a seat. Yes, ma'am. Just
12 speak so everybody can hear you.

13 What questions would you have answered "yes" to?

14 THE PROSPECTIVE JUROR: One where it was extremely
15 inconvenient for me to stay four to six weeks.

16 THE COURT: What is the reason?

17 THE PROSPECTIVE JUROR: For work. So, I started
18 working at a company called Trinity Solar less than a month
19 ago. I work as a recruiter so my job is to hire salesmen and
20 it's an ongoing position. So, we hire people every week so if
21 I'm out for weeks, then I would have to catch up on four weeks
22 of applicants and then it just -- you know, even contacting
23 people from four weeks ago, most of them would be hired and
24 it's just, and it would be nearly impossible for me to catch
25 up.

Side Bar

104

1 THE COURT: But is it possible you could contact
2 these people after your day of jury service is concluded and
3 arrange to recruit and do whatever you do?

4 THE PROSPECTIVE JUROR: So, I -- so, my job, it
5 starts with resumes, like, screening anywhere from 30 to 130
6 resumes and then full screens and full interviews so it
7 wouldn't be enough time after jury duty.

8 THE COURT: Okay. All right. Let me ask you to
9 just step back for a moment.

10 (Prospective juror leaves sidebar.)

11 THE COURT: Does anyone object to excusing Juror
12 Number 64?

13 MR. BRAFMAN: No, Your Honor.

14 MS. KASULIS: No objection.

15 (Prospective juror joins side bar.)

16 THE COURT: Ma'am, we will excuse you. Please go
17 back to the jury room where you checked in and let them know
18 you are excused.

19 THE PROSPECTIVE JUROR: Okay.

20 THE COURT: Thank you.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Juror 65, would you have answered "yes"
24 to any of my questions?

25 THE PROSPECTIVE JUROR: Yes.

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Side Bar

105

1 THE COURT: Please come up.

2 (Side bar continues; prospective juror joins.)

3 THE COURT: Have a seat up here, sir.

4 Good afternoon. How are you?

5 THE PROSPECTIVE JUROR: Good afternoon.

6 THE COURT: You are Juror 65, correct?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Yes. What did you have to tell us?

9 THE PROSPECTIVE JUROR: I have a daughter who is
10 under ten. I have -- I pass all my interviews so they may --
11 I'm on duty, my duty, they might call me before July 10th.
12 They may call me before July 10th.

13 THE COURT: So you have a young daughter that you
14 take care of?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you have anyone else in the family or
17 friends who can take care of her while you are on jury duty?

18 THE PROSPECTIVE JUROR: No. Sometimes I have to get
19 the babysitter.

20 THE COURT: You have a babysitter?

21 THE PROSPECTIVE JUROR: Yes, through the summer, but
22 the -- I have duty. I applied for job. I had interviews.
23 They promised to call me.

24 The other thing, my mother apply for a visa. Me,
25 they may send me to Colombia at any time because, on the

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1 phone, they may call me. So it seems like a long time because
2 before that --

3 THE COURT: So, you are waiting to get a call for an
4 interview for your own job?

5 THE PROSPECTIVE JUROR: No. I already passed my
6 interview. They promised to call me before July 10th.

7 THE COURT: To call you about what?

8 THE PROSPECTIVE JUROR: Before July 10th to start
9 working.

10 THE COURT: So you have been hired?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: I see. Okay. And --

13 THE PROSPECTIVE JUROR: And another thing. My
14 mother applied for a visa for her.

15 THE COURT: And you have to go --

16 THE PROSPECTIVE JUROR: -- to Colombia, because she
17 live in Aruba so they might be calling me any time after the
18 paper, process.

19 THE COURT: How long did she fill out papers?

20 THE PROSPECTIVE JUROR: Two years ago.

21 THE COURT: Two years ago? Do you have any
22 indication that they are going to be calling you soon?

23 THE PROSPECTIVE JUROR: Yes, because from embassy, I
24 spoke to them. Any time, they might send me paper to go to
25 Colombia.

Side Bar

107

1 THE COURT: All right. Let me ask you to step back
2 over here. Don't go far, please. Just over there.

3 (Prospective juror leaves side bar.)

4 THE COURT: Anyone object to excusing Juror 65?

5 MR. BRAFMAN: No, Your Honor.

6 MS. KASULIS: No objection.

7 (Prospective juror joins side bar.)

8 THE COURT: Sir, we will excuse you. Please go back
9 to the jury room where you were earlier today and make a note
10 you have been excused.

11 THE PROSPECTIVE JUROR: Okay. Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Juror 66, would you have answered "yes"
15 to any of my questions?

16 THE PROSPECTIVE JUROR: No, Your Honor.

17 THE COURT: Thank you, ma'am. Would you please go
18 to the seat previously occupied by Juror Number 8.

19 Juror Number 67?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Would you have answered "yes" to any of
22 my questions?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Come on up, ma'am.

25 (Sidebar continues; prospective juror joins.)

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Side Bar

108

1 THE COURT: Hello.

2 THE PROSPECTIVE JUROR: Hi.

3 THE COURT: Have a seat. Yes, ma'am?

4 THE PROSPECTIVE JUROR: I have two issues.

5 THE COURT: Yes.

6 THE PROSPECTIVE JUROR: I don't think I can be
7 impartial. The fact that he raised the price of that AIDS
8 medication, like, an amount of money disgusts me. I don't
9 think I'll ever be able to forget that. Who does that, puts
10 profit and self-interest ahead of anything else? So, it's not
11 a far stretch that he could do this, what he's accused of.
12 Sorry.

13 THE COURT: No, you need to be honest with us.

14 THE PROSPECTIVE JUROR: Honestly. Sorry.

15 Second of all, I have conflict. July 15th through
16 the 22nd, I have a vacation scheduled.

17 THE COURT: Okay. Thank you. Why don't you just
18 step to the side for one moment.

19 (Prospective juror leaves side bar.)

20 THE COURT: Mr. Brafman, you would like to challenge
21 this juror for cause?

22 MR. BRAFMAN: Yes, ma'am.

23 THE COURT: And the Government is not going to
24 object?

25 MS. SMITH: No, Your Honor.

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Side Bar

109

1 (Prospective juror joins side bar.)

2 THE COURT: Ma'am, we will excuse you. Please go to
3 the jury room and tell them you have been excused.

4 Juror Number 67 is excused for cause.

5 (Prospective juror excused.)

6 (In open court.)

7 THE COURT: Juror 68. Ma'am, would you have
8 answered "yes" to any of my questions?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Come on up.

11 (Side bar continues; prospective juror joins.)

12 THE COURT: Juror 68, hello.

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: What would you like to tell me?

15 THE PROSPECTIVE JUROR: Yes. You know, just I worry
16 because I am not that perfect English.

17 THE COURT: Yes.

18 THE PROSPECTIVE JUROR: And I don't know every
19 sentence, I will understand. I'm not sure. Yes.

20 THE COURT: All right. So, tell me about yourself.
21 How long have you lived in this country, the United States?

22 THE PROSPECTIVE JUROR: Seventeen years.

23 THE COURT: Did you work?

24 THE PROSPECTIVE JUROR: Yes, I work.

25 THE COURT: What did you do?

1 THE PROSPECTIVE JUROR: I was a medical assistant.

2 THE COURT: Was that in a doctor's office?

3 THE PROSPECTIVE JUROR: It was a private, private
4 practice.

5 THE COURT: What language was spoken?

6 THE PROSPECTIVE JUROR: Hungarian. And we primarily
7 used Hungarian.

8 THE COURT: Did you ever speak with English-speaking
9 patients or doctors?

10 THE PROSPECTIVE JUROR: With the patient, yes, but
11 it was easiest because my origin, occupation is a nurse, whole
12 lifetime, but the other field, you know, it is a different
13 story.

14 THE COURT: All right. Did you ever study English?

15 THE PROSPECTIVE JUROR: Just two semester of my
16 training, college.

17 THE COURT: All right. Well, it is important that
18 you are able to understand the evidence in this case.

19 THE PROSPECTIVE JUROR: You know, because I saw in
20 the TV and newspaper.

21 THE COURT: You saw this case?

22 THE PROSPECTIVE JUROR: Yes, this case. I know is
23 two years ago and I know what he did.

24 THE COURT: Well, what you may have read in the
25 newspaper is not part of the charges in this case, but why

Side Bar

111

1 don't I just ask you to step aside just to the side. Not too
2 far. Just a few feet away.

3 (Prospective juror leaves side bar.)

4 THE COURT: Does anyone --

5 MR. BRAFMAN: We challenge for cause, Your Honor.

6 THE COURT: Challenge for cause? All right.

7 Any objection?

8 MS. KASULIS: No objection.

9 (Prospective juror joins side bar.)

10 THE COURT: Ma'am, we will excuse you. Please go to
11 the jury room and tell them you have been excused.

12 THE PROSPECTIVE JUROR: Where are you going?

13 THE COURT: You know where you checked in this
14 morning? Just go back and tell them you are excused. Just be
15 careful of the step.

16 THE PROSPECTIVE JUROR: Thank you.

17 (Prospective juror excused.)

18 (In open court.)

19 THE COURT: Juror Number 69, would you have answered
20 "yes" to any of my questions?

21 THE PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: Come on up, sir.

23 (Side bar continues; prospective juror joins.)

24 THE COURT: Hello.

25 THE PROSPECTIVE JUROR: Hi.

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1 THE COURT: How are you, sir?

2 THE PROSPECTIVE JUROR: Good.

3 THE COURT: Juror Number 69, what can you tell us?

4 THE PROSPECTIVE JUROR: I just got engaged this past
5 weekend.

6 THE COURT: Okay. You got engaged?
7 Congratulations.

8 THE PROSPECTIVE JUROR: Yes. So I'm planning for a
9 way to a honeymoon, but in order to do that honeymoon, I have
10 to work overtime and if I'm here for six months, I won't be
11 able to.

12 THE COURT: Six weeks.

13 THE PROSPECTIVE JUROR: Well, for six weeks, I won't
14 be able to.

15 THE COURT: So, you want to be able to work overtime
16 to have a wedding?

17 THE PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: Okay. Does your employer pay you to
19 work while you're on jury duty?

20 THE PROSPECTIVE JUROR: Yes. I work for UPS.

21 THE COURT: You're with UPS?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Do you regularly work
24 overtime?

25 THE PROSPECTIVE JUROR: Every day. Every day.

Side Bar

113

1 THE COURT: So, you don't get paid for overtime if
2 you're on jury duty?

3 THE PROSPECTIVE JUROR: Obviously not.

4 THE COURT: Just your standard salary?

5 THE PROSPECTIVE JUROR: Correct, yes. I was
6 thinking maybe take another trial that's shorter. I wouldn't
7 mind doing that.

8 THE COURT: Okay. Let me just ask you to step over
9 there, please.

10 THE PROSPECTIVE JUROR: Sure.

11 (Prospective juror leaves side bar.)

12 THE COURT: So, does anyone object to excusing Juror
13 Number 69?

14 MR. BRAFMAN: No, Your Honor.

15 MS. KASULIS: No, Your Honor.

16 (Prospective juror joins side bar.)

17 THE COURT: Sir, would you kindly go to the jury
18 room and tell them you are excused from this panel but you
19 might be available for a shorter trial?

20 THE PROSPECTIVE JUROR: I appreciate it.

21 THE COURT: Okay. Congratulations and good luck to
22 you.

23 THE PROSPECTIVE JUROR: Thank you.

24 (Prospective juror excused.)

25 (In open court.)

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Side Bar

114

1 THE COURT: Juror Number 70, would you have answered
2 "yes" to any of my questions?

3 THE PROSPECTIVE JUROR: Yes, Your Honor.

4 THE COURT: Please come up, sir.

5 (Side bar continues; prospective juror joins.)

6 THE COURT: Hello, sir. Have a seat.

7 You are Juror Number 70, correct?

8 THE PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Have a seat. What would you like to
10 tell us?

11 THE PROSPECTIVE JUROR: Well, I was thinking about
12 what you said before, how you would feel if it was a member of
13 the family. If it was, I wouldn't want me on the jury. I
14 have total disdain for the man. When you go back to how he
15 was able to put so many children --

16 MR. BRAFMAN: Your Honor, could we just --

17 THE COURT: Yes. That's fine.

18 Based on what you have read in the media, you have
19 negative feelings?

20 THE PROSPECTIVE JUROR: Very.

21 THE COURT: Would those feelings prevent you from
22 being fair to both sides in this case?

23 THE PROSPECTIVE JUROR: Yes. I can be fair to one
24 side but not the other.

25 THE COURT: We will excuse you from this jury.

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1 Please go to the second floor back to the jury room and tell
2 them that you may be available for some other case.

3 THE PROSPECTIVE JUROR: Yes. I am sorry though.
4 Thank you.

5 THE COURT: All right. Thank you, sir.
6 (Prospective juror excused.)

7 MR. BRAFMAN: Your Honor, I just want to explain.
8 I wasn't trying to be rude, but we do have a member
9 of the press pool here and my expectation is that everything
10 negative that's been said at side bar will probably end up in
11 some type of a piece tomorrow in the media. I'm not being
12 critical. I know that's their job, but one of the concerns I
13 have is that if a juror is obviously about to go on a tirade
14 against Mr. Shkreli, I'm not certain it's helpful once he says
15 "utter disdain" for us to proceed. That's the only reason I
16 interrupted, Judge.

17 THE COURT: Well, what I was trying to do, sir, is
18 given the importance of fully fleshing out the basis for
19 anyone's feelings about a defendant as you pointed out and
20 without any intention to want to preclude a juror from being
21 completely candid and to disclose any potential bias, I was
22 surprised to hear you cut him off, but if you have heard
23 enough, that's fine.

24 MR. BRAFMAN: No, and, Judge, it's the only time I
25 think I've done it this morning.

1 THE COURT: I know.

2 MR. BRAFMAN: I'm trying to be cooperative.

3 THE COURT: I am not accusing you of being anything
4 other cooperative.

5 MR. BRAFMAN: I understand, Judge, and you're being
6 reasonable and fair. One of the reasons we objected to a
7 member of the press being here is because their job is to
8 report and I'm expecting the reports tomorrow, because that's
9 all we're dealing with, dealing with people that want to be
10 excused because they say they can't be fair. So I'm
11 anticipating, you know, an article or piece or several
12 tomorrow that will further complicate an already complicated
13 job of defending someone who so many people feel strongly
14 about. So, my hope is to try and level the playing field if
15 that's humanly possible, but I didn't want Your Honor to think
16 that I was just being rude. I saw it coming and I think I was
17 right, but I hear what you're saying, Your Honor.

18 THE COURT: No. Listen, Mr. Brafman, if you feel
19 that you have heard enough to make a motion to strike for
20 cause, that's fine. I just did not want to cut off a juror
21 since the whole idea is to encourage candor and to flesh out
22 any potential biases.

23 MR. BRAFMAN: I understand, Your Honor.

24 THE COURT: All right. Okay.

25 MS. KASULIS: Your Honor, just to underscore your

1 point, that was just our concern as well, just to make sure
2 that the record is clear and that then follow up with fair and
3 impartiality.

4 THE COURT: Right. That would be my next set of
5 questions, but my point is if you feel that you have heard
6 enough, you can give me a signal. I am not trying to create
7 any difficulties for your client obviously.

8 MR. BRAFMAN: I understand.

9 THE COURT: I am trying just very hard to make sure
10 that you have had a full opportunity to flesh out any biases
11 or concerns.

12 MR. BRAFMAN: But most of them, the Government to
13 its credit has been consenting to virtually every challenge
14 for cause and I appreciate that. So, to the extent that the
15 issue would be mine, if there wasn't a sufficient record, by
16 me asking Your Honor that we've had enough, I think unless
17 they want to continue, I don't think we have an issue on the
18 record. So I'll be mindful, Your Honor.

19 THE COURT: Okay.

20 MR. BRAFMAN: Thank you.

21 THE COURT: I just want to give everybody a fair
22 chance with voir dire.

23 (In open court.)

24 THE COURT: Juror Number 71, would any of your
25 answers to my question have been "yes"?

Side Bar

118

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: So, I would ask Juror Number 71 to
3 please take the seat of Juror Number 9.

4 Juror Number 72, would your answers to my questions
5 have been "yes"?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Please take the seat, Juror Number 72,
8 that was occupied by Juror Number 11.

9 Juror Number 73, would your answers to my questions
10 have been "yes"?

11 THE PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: Please come up, ma'am.

13 (Side bar continues; prospective juror joins.)

14 THE COURT: Come on up, ma'am. Yes, ma'am.

15 THE PROSPECTIVE JUROR: Hi. I have a doctor's
16 appointment on Wednesday. That could be changed but I've had
17 vacation plans starting on July 9th.

18 THE COURT: Okay. All right. And you can't change
19 your vacation plans?

20 THE PROSPECTIVE JUROR: Well, I have a summer home
21 and I have lots of people coming there.

22 THE COURT: You have to be there then, don't you?
23 So I will excuse you. Thank you.

24 THE PROSPECTIVE JUROR: Okay. Thank you.

25 (Prospective juror excused.)

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Side Bar

119

1 THE COURT: No objections?

2 MS. KASULIS: No objection.

3 MR. BRAFMAN: No objection.

4 THE COURT: Prospective Juror 73 is excused without
5 objection.

6 (In open court.)

7 THE COURT: Juror Number 74, would your answers to
8 my questions have been "yes"?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Please come on up, sir.

11 (Side bar continues; prospective juror joins.)

12 THE COURT: Hi. How are you?

13 THE PROSPECTIVE JUROR: Good.

14 THE COURT: You're number 74.

15 THE PROSPECTIVE JUROR: So four to six weeks, I have
16 a wedding on the last week of July that I'm going to drive to
17 so from the 23rd to the 26th, I won't be in town.

18 THE COURT: All right. Where's the wedding?

19 THE PROSPECTIVE JUROR: Vermont.

20 THE COURT: Vermont. Okay. All right. Are you in
21 the wedding?

22 THE PROSPECTIVE JUROR: It's my cousin so it's my
23 family.

24 THE COURT: So you have to be there. So you're out
25 from the 23rd to the 26th?

CMH

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RMR

CRR

FCRR

Side Bar

120

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you. Let me ask you to step over
3 there.

4 Any objection to excusing Juror Number 74?

5 MR. BRAFMAN: No.

6 MS. KASULIS: No.

7 (Prospective juror joins side bar.)

8 THE COURT: Sir, you are excused from this panel.
9 Please go back to the jury room and tell them you are
10 available for a shorter trial.

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you.

13 (Prospective juror excused.)

14 (In open court.)

15 THE COURT: Juror Number 75, would you have answered
16 "yes" to any of my questions?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: No? All right. Let me ask Juror
19 Number 75 to please take the seat that was previously occupied
20 by Juror Number 13.

21 Juror Number 76, would you have answered "yes" to
22 any of my questions?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Yes? Come on up, sir.

25 (Side bar continues; prospective juror joins.)

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1 THE COURT: Have a seat, sir.

2 Yes, sir, what would you have answered?

3 THE PROSPECTIVE JUROR: Yes. I do have a problem
4 though. I won't be able to be here next week. I'm leaving
5 the States on Wednesday.

6 THE COURT: Okay.

7 THE PROSPECTIVE JUROR: For family purpose. My
8 father is dying of cancer.

9 THE COURT: I'm so sorry. Well, we will excuse you.
10 Okay?

11 THE PROSPECTIVE JUROR: All right.

12 THE COURT: Thank you. All the best. I'm sorry.

13 THE PROSPECTIVE JUROR: Thank you. Do I return back
14 to the jury room?

15 THE COURT: Yes. Go back and they will give you
16 paperwork.

17 Juror Number 76 is excused. I take it there are no
18 objections?

19 MS. KASULIS: No objection.

20 MR. BRAFMAN: No objection.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Juror Number 77, would you have answered
24 "yes" to any of my questions?

25 THE PROSPECTIVE JUROR: Yes, Your Honor.

Side Bar

122

1 THE COURT: Come on up, sir.

2 (Side bar continues, prospective juror joins.)

3 THE COURT: Hello, sir. Are you Juror Number 77?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Have a seat. What can you tell me?

6 THE PROSPECTIVE JUROR: From everything I've seen on
7 the news, everything I've read, I believe the defendant is the
8 face of corporate greed in America.

9 MR. BRAFMAN: We would object.

10 THE COURT: All right. Sir, obviously what we want
11 is a juror to be fair minded to both sides. I'm not arguing
12 with you.

13 THE PROSPECTIVE JUROR: You'd have to convince me he
14 was innocent rather than guilty.

15 THE COURT: That is not the burden in our system of
16 justice.

17 THE PROSPECTIVE JUROR: Of course.

18 THE COURT: I will excuse this juror. Thank you.
19 Please go back to the jury room and tell them that you are
20 available to sit on some other case.

21 THE PROSPECTIVE JUROR: Sure.

22 THE COURT: There is a presumption of innocence in
23 our system of justice.

24 THE PROSPECTIVE JUROR: I understand that but in
25 this case, everything I've seen --

CMH

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RMR

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FCRR

1 THE COURT: Okay. Thank you, sir.

2 (Prospective juror excused.)

3 THE COURT: I just want to be clear, Mr. Brafman.

4 MR. BRAFMAN: That was --

5 THE COURT: You want it short.

6 MR. BRAFMAN: Yes. I understand, Your Honor.

7 THE COURT: I just want to confirm that that was
8 acceptable to you.

9 MR. BRAFMAN: Yes.

10 THE COURT: To just finish the voir dire and excuse
11 him?

12 MR. BRAFMAN: Yes, Your Honor.

13 THE COURT: Okay.

14 (In open court.)

15 THE COURT: Juror Number 78, would you have answered
16 "yes" to any of my questions?

17 THE PROSPECTIVE JUROR: No, Your Honor.

18 THE COURT: Okay. Thank you, sir. I'm going to ask
19 you please to go to the seat occupied by Juror Number 14 and I
20 appreciate having you sit in seat 14.

21 Juror Number 79, ma'am, would you have answered
22 "yes" to any of my questions?

23 THE PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: Please come on up.

25 (Side bar continues; prospective juror joins.)

1 THE COURT: Hi, ma'am. Have a seat. You are Juror
2 Number 79?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: The question was whether you would have
5 answered "yes" to any of my questions. If so, what are they?

6 THE PROSPECTIVE JUROR: I would say biased because I
7 feel like I would lean more towards, like, guilty or something
8 because he's accused of so many things.

9 THE COURT: Well, in our system of justice, there is
10 a presumption of innocence and that never changes until the
11 Government proves somebody guilty beyond a reasonable doubt.
12 What we want is a juror with a fair and open mind who will put
13 aside any feelings of bias or favor one party over another and
14 to decide the case with an open mind after considering all the
15 evidence and only the evidence in this trial.

16 So, the question for you is, you mentioned that you
17 might be biased.

18 THE PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Would you explain? Is that based on
20 anything you have heard about the case or just your own sense
21 of the criminal justice system?

22 THE PROSPECTIVE JUROR: Like, I guess, sense. I
23 didn't really hear anything about the case or anything, but it
24 just, I know -- you go with your first feeling and stuff like
25 that, but, you know, I could be wrong but that's a feeling I'm

1 getting.

2 THE COURT: Okay. Everyone is entitled to feelings.
3 What is important is that you accept the principle in our
4 system -- well, whether you can accept the principle in our
5 system of justice that there is a presumption of innocence and
6 the burden is on the Government to prove beyond a reasonable
7 doubt that somebody is guilty. And what the jury is asked to
8 do is to keep an open mind and consider only the evidence at
9 the trial.

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: Would you be able to do that or do you
12 feel --

13 THE PROSPECTIVE JUROR: Yes, I would.

14 THE COURT: All right. Let me just ask you to step
15 back for one moment.

16 THE PROSPECTIVE JUROR: Sure.

17 MR. BRAFMAN: Your Honor?

18 THE COURT: She hasn't heard about the case but
19 there is the question.

20 MR. BRAFMAN: She hasn't heard about the case but
21 I'm trying to understand what it is about these proceedings
22 that cause her immediate reaction to be biased against the
23 defendant. Inasmuch as I would like to avoid that record, I
24 would like to explore that because I think she should be
25 challenged for cause because I think she was candid and then

Side Bar

126

1 she obviously answered a lot of your questions appropriately
2 but physically, looking at her, she's very young and very
3 nervous and I would ask Your Honor to press the issue of why
4 she feels she would be biased, why she said that.

5 THE COURT: All right. I will do so. I have to say
6 it's unfortunate but this does happen oftentimes when people
7 see the indictment, they make assumptions. Oftentimes in voir
8 dire, we can explore those feelings further and I will ask her
9 why she mentioned she was biased.

10 (Prospective juror joins side bar.)

11 THE COURT: Ma'am, come on back up. Thank you.

12 Given what I have told you about principles of our
13 system and asking you whether you could accept them, we are
14 curious to know why you initially said and why you were
15 biased, why you felt biased and whether you still feel that
16 way.

17 THE PROSPECTIVE JUROR: I'm -- it's really no
18 particular reason. Like, it's just, you know, like, a feeling
19 or, like -- no reason, but I guess what I feel.

20 THE COURT: You are relying on your gut instinct
21 about this?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. Do you accept the principle that
24 there is a presumption of innocence and nobody can be found
25 guilty unless and until the Government proves guilt beyond a

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1 reasonable doubt?

2 THE PROSPECTIVE JUROR: Yes, but even if I do, I do
3 have, like, you know other things. I have doctors'
4 appointments I have to go to twice a week, so I probably won't
5 be able to anyway.

6 THE COURT: Okay. Well, I appreciate your candor on
7 your feelings and your doctors' appointments. Are they in the
8 next couple of weeks?

9 THE PROSPECTIVE JUROR: Yes. Twice a week, I go.

10 THE COURT: Well, I will excuse you. You can go to
11 the jury room where you checked in and let them know you're
12 excused.

13 THE PROSPECTIVE JUROR: Thank you. Thank you, Your
14 Honor.

15 THE COURT: Any objection to excusing her?

16 MR. BRAFMAN: No objection, Your Honor.

17 (Prospective juror excused.)

18 (Continued on next page.)
19
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21
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25

Sidebar

128

1 (Continuing)

2 (Sidebar continues.)

3 THE COURT: The extra jurors who are just not in the
4 first 130 but are in the jury assembly room just want to have
5 a lunch break, and I think that will be fine; hopefully, it
6 won't be a full hour, though.

7 THE COURTROOM DEPUTY: Yes.

8 (In open court.)

9 THE COURT: Juror No. 80, would you have answered
10 yes to any of my questions?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Please come forward.

13 (Sidebar continues; prospective juror joins.)

14 THE COURT: Juror No. 80, how are you?

15 THE PROSPECTIVE JUROR: I'm well, thanks.

16 THE COURT: You said you would have answered yes --

17 THE PROSPECTIVE JUROR: Yes, the first one and the
18 second one, first one being I read about him. Also, a good
19 friend of mine had a lot of money lost in a Ponzi scheme. To
20 me, they're all out of the same stable so I wouldn't be able
21 to give a good, unbiased...

22 THE COURT: You could not put aside your --

23 THE PROSPECTIVE JUROR: No, because it's a good
24 friend of mine. I wouldn't be able to see what he went
25 through and put it aside and say it didn't happen.

Sidebar

129

1 And the second one is I would be on vacation the
2 first week of August. So, that's, you know, so...

3 THE COURT: Thank you, ma'am. I'm going to excuse
4 you. Please go to the jury room.

5 There is a presumption in our justice system that
6 people are innocent until proven guilty.

7 THE PROSPECTIVE JUROR: I understand, have an open
8 mind and all of that, but, as I said, I won't be able to --

9 THE COURT: Please go to the jury room and tell them
10 you've been excused.

11 (Prospective juror excused.)

12 THE COURT: Juror No. 80 is excused I'm sure without
13 objection from anybody.

14 (In open court.)

15 THE COURT: Juror No. 81, ma'am, would you have
16 answered yes to any of my questions?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: Please come forward.

19 (Sidebar continues; prospective juror joins.)

20 THE COURT: Hello, ma'am. Juror 81?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Yes, ma'am, what would you have answered
23 yes to?

24 THE PROSPECTIVE JUROR: First, when I filled out the
25 survey for jury duty, I did indicate that I'm a caregiver for

1 two of my grandchildren, ages three and one.

2 For me to land on a case for four to six weeks would
3 be a tremendous hardship for my family financially.

4 THE COURT: There's nobody else who could give --

5 THE PROSPECTIVE JUROR: No. My husband helps me,
6 but my husband hip replacement, knee replacements, and now
7 needs back surgery. And he can't tackle them as well.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: So, I'd appreciate being on
10 a case of less duration.

11 THE COURT: Let's do this: I'll ask you to go to
12 the jury room and tell them that you're free to sit on a jury
13 of a shorter duration.

14 THE PROSPECTIVE JUROR: Thank you so much.

15 THE COURT: We're going to excuse Juror No. 81.

16 THE PROSPECTIVE JUROR: Thank you very much.

17 THE COURT: No objection, anybody?

18 MS. KASULIS: No objection.

19 MR. BRAFMAN: No objection.

20 THE PROSPECTIVE JUROR: Thank you.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Juror No. 82, would you have answered
24 yes to any of my questions?

25 THE PROSPECTIVE JUROR: No.

Sidebar

131

1 THE COURT: Let me ask you to please take the seat
2 that was previously occupied by Juror 17.

3 Juror NO. 83, would you have answered yes to any of
4 my questions? Yes? Come on up, sir.

5 (Sidebar continues; prospective juror joins.)

6 THE COURT: You're Juror No. 83?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Yes, sir?

9 THE PROSPECTIVE JUROR: One, I have two medical
10 appointments.

11 THE COURT: During the six weeks?

12 THE PROSPECTIVE JUROR: Yes.

13 And I run three car dealerships. I can't be gone
14 for this amount of time.

15 THE COURT: You run the car dealership. You mean --

16 THE PROSPECTIVE JUROR: Three of them.

17 THE COURT: -- you're the owner or the manager?

18 THE PROSPECTIVE JUROR: I manage them.

19 THE COURT: No one else can fill in for you?

20 THE PROSPECTIVE JUROR: No.

21 THE COURT: Let me ask you to step over to the side.

22 (Prospective juror leaves sidebar.)

23 MR. BRAFMAN: No objection.

24 THE COURT: Any objection to excusing 83?

25 MS. SMITH: No.

Sidebar

132

1 MS. KASULIS: No.

2 THE COURT: We'll excuse 83.

3 (Prospective juror joins sidebar.)

4 THE COURT: You're going to be excused. Go back to
5 the jury room and tell them you're excused and you'll get your
6 paperwork.

7 (Prospective juror excused.)

8 (In open court.)

9 THE COURT: Juror No. 84, would you have answered
10 yes to any of my questions?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Please come up.

13 (Sidebar continues; prospective juror joins.)

14 THE COURT: Have a seat. You're Juror 84, correct.

15 THE PROSPECTIVE JUROR: Yes.

16 My only restriction is the time, the six weeks. I
17 only get paid for four days and that's it in my job. So, I
18 won't be able to pay rent. It's kind of an issue for me.

19 THE COURT: As it is for all of us, sir. All right.
20 I will excuse you. Please go to the jury room where you
21 checked in and let them know.

22 THE PROSPECTIVE JUROR: Okay.

23 THE COURT: I have take it there are no objections
24 to excusing 84.

25 MR. BRAFMAN: No objections.

Sidebar

133

1 MS. KASULIS: No objection.

2 (Prospective juror excused.)

3 THE COURT: Juror 85, would you have answered yes to
4 any of my questions?

5 THE PROSPECTIVE JUROR: No, your Honor.

6 THE COURT: Juror 85, I will kindly ask you to take
7 the seat previously occupied as Seat 18. It's over to the
8 left. There's a label on the seat.

9 Somebody can guide her there, Seat 18.

10 Juror 86, would you have answered yes to any of my
11 questions?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Please come on up.

14 (Sidebar continues; prospective juror joins.)

15 THE COURT: Hello. Juror 86?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Please have a seat. Yes, ma'am.

18 THE PROSPECTIVE JUROR: First of all, my work will
19 not let me participate in this case, as well as my previous
20 experience. I was laid off because of insurance fraud run by
21 management. So, this kind of thing that I think will not -- I
22 will not be able to actually judge. Also, I'm traveling in
23 two weeks.

24 So, I'm not going to be able to be juror.

25 THE COURT: So, your job will not allow you to

Sidebar

134

1 take -- does your job pay you?

2 THE PROSPECTIVE JUROR: My job pays me. I'm
3 assistant to CO. I have to be available mostly 24/7. I was
4 told I was called for jury duty. The policy we have allow me
5 to take up to ten days but not more.

6 THE COURT: So you would only be paid for basically
7 two weeks of service.

8 THE PROSPECTIVE JUROR: Correct.

9 THE COURT: I'm going to excuse you and ask you to
10 go to the jury room and tell them you've been excused.

11 THE PROSPECTIVE JUROR: Thank you so much.

12 (Prospective juror excused.)

13 THE COURT: No objection to excusing 86, correct.

14 MR. BRAFMAN: No objection.

15 MS. KASULIS: No objection.

16 (In open court.)

17 THE COURT: Juror 87, would you have answered yes to
18 any of my questions? Come on up.

19 (Sidebar continues; prospective juror joins.)

20 THE COURT: Hi. How are you?

21 Juror 87? Please have a seat.

22 THE PROSPECTIVE JUROR: My ex-husband had a medical
23 supply business that he took public, so I don't feel
24 comfortable with this case.

25 THE COURT: Your husband has a medical supply?

Sidebar

135

1 THE PROSPECTIVE JUROR: That he took public.

2 THE COURT: And?

3 THE PROSPECTIVE JUROR: I would never convict him.

4 I think that's part of the stock market.

5 THE COURT: The question is whether you could keep
6 in mind --

7 THE PROSPECTIVE JUROR: No. I saw what my
8 ex-husband did, no. I think it's a scam, the stock market. I
9 think people that are invested know about that.

10 THE COURT: So in terms of your husband's
11 experience, you wouldn't be able to put that aside --

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: -- and decide this cased based on the
14 evidence?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Let me ask you to step back for a
17 moment.

18 (Prospective juror leaves sidebar.)

19 MS. KASULIS: Challenge for cause.

20 (Prospective juror joins sidebar.)

21 THE COURT: Ma'am, we're going to excuse you.
22 Please report back to the jury room.

23 THE PROSPECTIVE JUROR: Thanks. Good luck.

24 (Prospective juror excused.)

25 (In open court.)

Sidebar

136

1 THE COURT: Juror 88, would you have answered yes to
2 any of my questions?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Please come forward.

5 (Sidebar continues; prospective juror joins.)

6 THE COURT: Hi. Good afternoon.

7 Juror 88? Please have a seat.

8 THE PROSPECTIVE JUROR: Thank you.

9 THE COURT: Yes, ma'am?

10 THE PROSPECTIVE JUROR: I am currently 12 weeks
11 pregnant, so I have doctor's appointments weekly; I have two
12 next week, one of them is time-sensitive.

13 I'm also employed by a golf course and I do
14 catering. I work nights until midnight, which makes it very
15 difficult to be up at six for a two-hour commute to come here.

16 THE COURT: Let me ask you to just step back for one
17 moment just right over here.

18 (Prospective juror leaves sidebar.)

19 THE COURT: Any objections to excusing Juror No. 88?

20 MR. BRAFMAN: No, your Honor.

21 MS. KASULIS: No.

22 (Prospective juror joins sidebar.)

23 THE COURT: Ma'am, we're going to excuse you. Just
24 go back to the jury room and tell them you've been excused.

25 And congratulations.

Sidebar

137

1 THE PROSPECTIVE JUROR: Thank you.

2 (Prospective juror excused.)

3 (In open court.)

4 THE COURT: Juror 89, would you have answered yes to
5 any of my questions?

6 THE PROSPECTIVE JUROR: Yes, your Honor.

7 THE COURT: Please come on up, sir.

8 (Sidebar continues; prospective juror joins.)

9 THE COURT: Hello, sir. Juror 89?

10 THE PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: Have a seat.

12 THE PROSPECTIVE JUROR: I work with the Department
13 of Labor and I have a scheduled hearing in front of a judge on
14 Friday. In addition, next month I'm going to travel.

15 THE COURT: So, do you have -- you said you're with
16 the Department of Labor. The state or the federal?

17 THE PROSPECTIVE JUROR: The state, I work with the
18 state.

19 THE COURT: And what do you do for Department of
20 Labor.

21 THE PROSPECTIVE JUROR: I'm a state auditor. I
22 examine Government employer books and records.

23 THE COURT: Do you have to be present at the
24 hearing?

25 THE PROSPECTIVE JUROR: Yes, because I have to

Sidebar

138

1 defend my work.

2 THE COURT: I see. And the hearing is set for what
3 date?

4 THE PROSPECTIVE JUROR: The 30th this month, this
5 Friday.

6 THE COURT: And there's no one else that could fill
7 in for you?

8 THE PROSPECTIVE JUROR: No, because it's my work.

9 THE COURT: And you're traveling out of state next
10 month.

11 THE PROSPECTIVE JUROR: Yes, I'm going to my country
12 the 27th of July.

13 THE COURT: You have tickets already, sir?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: Do you have any latitude in arranging
16 your trip?

17 THE PROSPECTIVE JUROR: My son is going to book the
18 flight today.

19 THE COURT: Let me ask you to step back for one
20 second, please.

21 (Prospective juror leaves sidebar.)

22 THE COURT: Any objection to excusing Juror 89?

23 MR. BRAFMAN: No, your Honor.

24 MS. KASULIS: No.

25 (Prospective juror joins sidebar.)

Sidebar

139

1 THE COURT: Sir, I'm going to excuse you. You may
2 go down to the jury room, check in, and let them know you're
3 excused, all right? Thank you.

4 (Prospective juror excused.)

5 (In open court.)

6 THE COURT: Juror No. 90, would you have answered
7 yes to any of my questions?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Come on up.

10 (Sidebar continues; prospective juror joins.)

11 THE COURT: Hi, sir. You're Juror No. 90?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Have a seat.

14 THE PROSPECTIVE JUROR: In regards to your earlier
15 questions, I've seen enough stories myself where I formed a
16 fairly negative opinion already. I've love to be impartial,
17 but the reality is I already have an opinion.

18 THE COURT: Would you be able to set that opinion
19 aside and, as a juror, keep an open mind and a fair mind
20 towards both sides and decide the case based only on the
21 evidence?

22 THE PROSPECTIVE JUROR: I'd like to think I could.
23 But when he I realized who it was, I said to myself: Oh, it's
24 that guy.

25 I'd love to be impartial, but the reality is I don't

Sidebar

140

1 know that I could, to be honest.

2 THE COURT: All right. I'm going to excuse you,
3 sir. So, just go back to the jury room. There might be
4 another case that you will be available to serve.

5 (Prospective juror excused.)

6 THE COURT: I'm going to, for the record, interpret
7 that your hand going up was a challenge for cause, which I
8 granted.

9 MR. BRAFMAN: Yes, your Honor. I just didn't want
10 to embarrass the juror.

11 THE COURT: I understand.

12 (In open court.)

13 THE COURT: Juror No. 91, would you have answered
14 yes to any of my questions?

15 THE PROSPECTIVE JUROR: Yes, your Honor.

16 THE COURT: Please come on up, sir.

17 (Sidebar continues; prospective juror joins.)

18 THE COURT: Have a seat. How are you?

19 THE PROSPECTIVE JUROR: Good. How are you?

20 THE COURT: Good. Juror No. 91, what can you tell
21 me about your answers?

22 THE PROSPECTIVE JUROR: It was for your second
23 question. Part of my income is freelance work, which means if
24 I'm absent for about four to six weeks, I can't really afford
25 to live in my apartment.

Sidebar

141

1 THE COURT: Tell me about the freelance work you do.

2 THE PROSPECTIVE JUROR: It's two. I'm a tennis
3 coach and the other is I'm a private tutor.

4 THE COURT: So, you don't do any of these on the
5 evenings and weekends?

6 THE PROSPECTIVE JUROR: Tennis coaching is the
7 entire day, from nine to four.

8 THE COURT: And the tutoring?

9 THE PROSPECTIVE JUROR: Tutoring is more on the
10 evening and weekend.

11 In addition, I already paid for vacations. Two are
12 the week of July -- later weeks of July. And then the second
13 one is in August. So, hypothetically, if it were to extend
14 that far that could be an issue, but I'm not really
15 considering that one, it's more the first one.

16 THE COURT: And that's your sole source of income,
17 your freelance --

18 THE PROSPECTIVE JUROR: Well, I'm also a teacher,
19 but now I'm off.

20 THE COURT: Got it.

21 Let me ask you just to briefly step to the side,
22 there.

23 (Prospective juror leaves sidebar.)

24 THE COURT: Any objection to excusing Juror No. 91?

25 MS. KASULIS: No objection.

Sidebar

142

1 MR. BRAFMAN: No, your Honor.

2 (Prospective juror joins sidebar.)

3 THE COURT: We'll excuse you. Please go to the jury
4 room where you started.

5 Did you go to Stanford?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: I'm just looking at your tree.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Juror 92, would you have answered yes to
11 any of my questions?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Come on up, please.

14 (Sidebar continues; prospective juror joins.)

15 THE COURT: How are you, ma'am? Juror No. 92?

16 THE PROSPECTIVE JUROR: Yeah.

17 THE COURT: Yes, ma'am?

18 THE PROSPECTIVE JUROR: I have a responsibility at
19 home. My husband was injured, and he has a whole right
20 side -- everything broken from the scapula. And he has a
21 spine problem, so he has balancing issue. So, I have to be
22 able to watch him. He also fractured his toes and burn
23 himself.

24 And myself is high blood pressure these days. I
25 just had doctor in the process of checking it. They told me

LAM

OCR

RPR

Sidebar

143

1 very dangerous because it zoom up all of a sudden.

2 So, talking about fraud, I had credit card fraud.

3 THE COURT: You were the victim of credit card
4 fraud?

5 THE PROSPECTIVE JUROR: Yes. It took us a year to
6 solve the issue.

7 THE COURT: Those issues are not charged in the
8 indictment, but it seems to me your personal circumstances --

9 THE PROSPECTIVE JUROR: It's very bad. I'm under a
10 lot of pressure right now.

11 THE COURT: I will excuse you. Go back to the jury
12 room and tell them you're excused.

13 THE PROSPECTIVE JUROR: Thanks so much.

14 THE COURT: I take it no objection?

15 MR. BRAFMAN: No objection, Judge.

16 MS. SMITH: No objection.

17 (Prospective juror excused.)

18 (In open court.)

19 THE COURT: No. 93, would you have answered yes to
20 any of my questions?

21 THE PROSPECTIVE JUROR: Yes, your Honor.

22 THE COURT: Come up, sir.

23 (Sidebar continues; prospective juror joins.)

24 THE COURT: How are you, Juror No. 93? Please have
25 a seat.

Sidebar

144

1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: What would you like to tell us?

3 THE PROSPECTIVE JUROR: Not so much on the first two
4 questions that you asked, but it would be a hardship for me to
5 serve.

6 THE COURT: Because of?

7 THE PROSPECTIVE JUROR: Financially. Obviously, I
8 can't go for four weeks without a paycheck. There's no way.

9 THE COURT: Does your employer pay you to serve on
10 the jury at all.

11 THE PROSPECTIVE JUROR: No.

12 They're a very large company, Henry Shine Medical
13 Supply.

14 THE COURT: Okay.

15 THE PROSPECTIVE JUROR: And I drive the executives.
16 I'm a driver there. But I drive all, you know, the CFO, CEO.
17 But, yeah, financially is the main reason.

18 THE COURT: So you'll lose pay if you're not --

19 THE PROSPECTIVE JUROR: Absolutely.

20 THE COURT: All right, sir. I'll excuse you then,
21 all right?

22 THE PROSPECTIVE JUROR: Thank you.

23 THE COURT: Go to the jury room where you checked in
24 this morning and let them know.

25 (Prospective juror excused.)

Sidebar

145

1 THE COURT: Any objections to excusing 93?

2 MS. SMITH: No.

3 MR. BRAFMAN: No, your Honor.

4 (In open court.)

5 THE COURT: No. 94, would you have answered yes to
6 any of my questions? Come on up.

7 (Sidebar continues; prospective juror joins.)

8 THE COURT: Hello, Juror No. 94. Have a seat. How
9 are you?

10 THE PROSPECTIVE JUROR: Not bad. Yourself?

11 THE COURT: Okay. Yes, ma'am, you said --

12 THE PROSPECTIVE JUROR: I'm leaving the country in
13 about three weeks.

14 THE COURT: All right. You're going to Italy.

15 THE PROSPECTIVE JUROR: Yes.

16 MS. ZELLAN: Enjoy.

17 THE COURT: Have a good trip. Just go to the jury
18 room and tell them you're excused. Have a nice time.

19 THE PROSPECTIVE JUROR: Thank you very much.

20 THE COURT: We can either keep going -

21 MR. BRAFMAN: I would like a break, your Honor.

22 THE COURT: I'm going to just admonish the jury not
23 to speak to anybody and to come back.

24 MR. BRAFMAN: We're in very close quarters in this
25 building. Could you also indicate to the jurors that the

1 parties on both sides, if they run into them, are not going to
2 speak to them; they're not being rude...

3 THE COURT: Yes.

4 MS. KASULIS: And ask them not to check their phones
5 or read anything about this.

6 MR. BRAFMAN: And include social media in that
7 instruction, your Honor, please.

8 THE COURT: Yes.

9 MS. ZELLAN: I didn't hear what you said.

10 MS. KASULIS: To instruct the jury not to read
11 anything on their phone.

12 One quick aside. We thought one of the sketch
13 artists was sketching the jurors.

14 THE COURT: I didn't realize that. They're not
15 supposed to. Did they not get the order?

16 THE NEWS REPORTER: It was the mother-daughter pair.

17 THE COURT: Do you know them?

18 THE NEWS REPORTER: I don't really.

19 THE COURT: If you can, let them know there's an
20 order.

21 I'll make an announcement and ask them to come back
22 here -- should I ask them to come back to the courtroom by 2,
23 in their seats?

24 I don't want to line them all up and take that time
25 again.

Jury Selection

147

1 MS. KASULIS: All right.

2 THE COURT: 2 o'clock.

3 (Sidebar ends; in open court.)

4 THE COURT: At this time, I want to extend my
5 ongoing thanks to all of you for your patience.

6 We are going to give you a break. During that break
7 it's critical, that nobody speak about this case; do not speak
8 amongst yourselves and do not allow anyone to approach you to
9 talk about this case.

10 If you see the lawyers, the agents, or anyone seated
11 at defense table, do not be concerned if they do not speak to
12 you. They are not allowed to speak to anybody.

13 In addition, if you do retrieve your phones, do not
14 do any research about this case. If anything pops up on your
15 phone regarding this case, do not read it. Please.

16 And I don't want any research or internet or
17 statements by you or allow people to contact you and ask you
18 what you're doing. You've been called here for jury duty,
19 that's all you have to say. Please don't talk about the case.

20 I want to thank you. What I'm going to ask all of
21 you, even those whose numbers have not been called and those
22 whose numbers have been called to, return here promptly at
23 2 p.m. That's roughly one hour from now. Just resume your
24 seats, your same seats. And, again, please don't talk about
25 the case and, again, thank you very much. I'll see you at

Proceedings

148

1 two. Thank you.

2 (Prospective jurors excused.)

3 THE COURT: All right. Let's take one hour. Be
4 back here, please, just a little before two, if you don't
5 mind.

6 MR. AGNIFILO: 2 o'clock, Judge?

7 THE COURT: Yes.

8 You didn't want to address any of the other issues
9 during this lunch break, did you?

10 MR. AGNIFILO: No, no.

11 THE COURT: I'm happy to address them. But the
12 Government is going to be responding in some form or another
13 to the motion for reconsideration.

14 MS. KASULIS: Yes, your Honor. We're going to
15 responsible orally. If your Honor wants anything
16 additional --

17 THE COURT: I always prefer having things in the
18 record so it's clear, but whatever you can do. I appreciate
19 it.

20 MS. KASULIS: Okay, Judge.

21

22 (Luncheon recess taken.)

23

24

25

1 AFTERNOON SESSION

2 (In open court; outside the presence of the jury.)

3 (The following occurred at sidebar; prospective
4 jurors not present.)

5 THE COURT: Let's have a sidebar with the parties.
6 We are back on the record and we have all counsel
7 present.

8 Does Mr. Brafman want to be here?

9 MR. AGNIFILO: Yes.

10 THE COURT: We are making sure we are all on the
11 same page with regard to who is in what seat. I will read the
12 numbers and you can all tell me if I have made an error.

13 Seat 1, Juror No. 42. Seat 2, Juror No. 51, seat
14 55. Seat four, 43. Seat 5, 56. Seat 6, 57. Seat 7, same
15 person. Seat 8, 66. Seat 9, 71. Seat 10, same person.

16 Seat 11, 72. Seat 12, same person.

17 Seat 13, 75. Seat 14, 78. Seat 15 and 16 as
18 indicated currently on the list.

19 Seat 17, 82. Seat 18, 85.

20 19 and 20 are not yet filled. Seat 21 as indicated
21 on the list. Same for seat 22.

22 Seat 23 is open.

23 MR. BRAFMAN: I have 41 there.

24 THE COURT: Okay. 41. Thank you. Juror No. 41 is
25 in seat 23. Seat 24, as indicated.

1 Seats 25, 26, 27, and 28 are open. Seat 29 as
2 indicated.

3 Seat 30, I think I have Juror No. 49; is that right?

4 MR. BRAFMAN: Yes.

5 MS. SMITH: I have struck.

6 MS. KASULIS: I have struck.

7 THE COURT: I didn't strike. Seat 30 is empty.
8 Seat 31 is as indicated on the list. Seat 32 is empty. Seat
9 33 is as indicated on the list. Seats 34 and 35 are empty.
10 Seat 36, as indicated.

11 Seats 37 and 38 are vacant. Seat 39 is as
12 indicated. And seat 40 is empty.

13 MS. SMITH: We struck 50.

14 MS. KASULIS: We struck 50.

15 THE COURT: Yes. So we are going to resume with
16 Juror No. 95, I believe.

17 MR. AGNIFILO: Right.

18 THE COURT: Is that where you all are?

19 MS. KASULIS: Yes.

20 THE COURT: Just in case, we are going to have 40
21 additional jurors waiting in the jury room, but we will have
22 to start the voir dire over if that happens because they
23 haven't heard the questions.

24 MS. KASULIS: Your Honor, can I bring up a bottle of
25 water at sidebar?

1 THE COURT: You can have a water.

2 As soon as everyone is here, we will start.

3 (In open court - prospective jurors present.)

4 THE COURT: Thank you all for coming back. We will
5 get started as soon as we have everybody.

6 Sandra, you might have to go back to the jury room
7 to see if we have all the jurors.

8 Are you Juror No. 101?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you.

11 All right. I believe everybody is back. Thank you,
12 Ladies and Gentleman, for coming back promptly. I appreciate
13 it.

14 I am going to call Juror No. 95. Would Juror No. 95
15 have answered yes to any of the questions that I have asked so
16 far?

17 THE PROSPECTIVE JUROR: No, Your Honor.

18 THE COURT: Okay, sir, I will ask you to please sit
19 down in seat number 19, which is on the end here.

20 Juror No. 96, would you have answered yes to any of
21 my questions.

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: We are going to go to sidebar. Excuse
24 us, ladies and gentleman.

25 (Prospective juror present at sidebar.)

1 THE COURT: Juror No. 96.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you. What questions would you
4 have answered yes to?

5 THE PROSPECTIVE JUROR: When?

6 THE COURT: What do you want to tell me?

7 THE PROSPECTIVE JUROR: My English not good.

8 THE COURT: How long have you been in the United
9 States?

10 THE PROSPECTIVE JUROR: Over ten years.

11 THE COURT: What do you do for a living? Do you
12 work?

13 THE PROSPECTIVE JUROR: I work.

14 THE COURT: Where do you work?

15 THE PROSPECTIVE JUROR: Nails.

16 THE COURT: So you communicate with your customers
17 in English?

18 THE PROSPECTIVE JUROR: Some. Not really.

19 THE COURT: Do you use English in any other part of
20 your daily life?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: No. Have you studied English formally
23 in school?

24 THE PROSPECTIVE JUROR: Not really.

25 THE COURT: Let me ask you to stand back, please,

1 over here. Just stand over there, please.

2 (Prospective juror leaves sidebar.)

3 THE COURT: Does anybody have any issue with the
4 issue of she has minimal use of English?

5 MR. BRAFMAN: No.

6 MS. KASULIS: No objection.

7 (Prospective juror present at sidebar.)

8 THE COURT: Ma'am, go back to the jury room where
9 you started and tell them you are excused.

10 THE PROSPECTIVE JUROR: Thank you.

11 (Prospective juror excused.)

12 (In open court.)

13 THE COURT: Juror No. 97. Have you answered yes to
14 any of my questions?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: You have not. Let me ask you to sit in
17 the seat designated as seat number 20, ma'am. That is Juror
18 No. 97.

19 Juror No. 98, would you have answered yes to any of
20 my questions?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Please come up, ma'am.

23 (Prospective juror present at sidebar.)

24 THE COURT: Please have a seat.

25 THE PROSPECTIVE JUROR: How are you?

1 THE COURT: What questions would you have answered
2 yes to?

3 THE PROSPECTIVE JUROR: I have pause about the
4 scheduling. I have a weekly mental health appointment that I
5 wouldn't feel comfortable missing, and also at work, one of my
6 coworkers just quit, so now the pressure is on me to.

7 THE COURT: What kind of work do you do?

8 THE PROSPECTIVE JUROR: Publishing.

9 THE COURT: Is there anyone who can fill in?

10 THE PROSPECTIVE JUROR: It is a small team. If I am
11 out that whole time, we might have to hire freelance.

12 THE COURT: Do you get paid while you are on jury
13 duty?

14 THE PROSPECTIVE JUROR: I think so.

15 THE COURT: With regard to appointments, can you
16 schedule those for evenings or weekend?

17 THE PROSPECTIVE JUROR: She doesn't do weekends. It
18 is like 9:00 a.m.

19 THE COURT: Let me ask you to step over to the side
20 for one moment.

21 THE PROSPECTIVE JUROR: Okay.

22 (Prospective juror leaves sidebar.)

23 THE COURT: Do the parties have any view about this
24 juror? Should we excuse her? We can ask her to try to
25 re-schedule.

1 MR. BRAFMAN: I don't have a strong feeling either
2 way.

3 MS. KASULIS: No objection.

4 MS. SMITH: No objection.

5 MR. AGNIFILO: That's fine.

6 (Prospective juror present at sidebar.)

7 THE COURT: Ma'am, we will excuse you. You can go
8 to the jury room. Just tell them that you have been excused.

9 (Prospective juror excused.)

10 THE COURT: Juror No. 99, would you have answered
11 yes to my questions?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: I will ask Juror No. 99 to seat in a
14 seat previously occupied by Juror No. 25.

15 Juror No. 100, would you have answered yes to my any
16 of my questions?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: Juror No. 100, please go to the seat
19 designated as seat No. 26.

20 Juror No. 101, would you have answered yes to any of
21 my questions?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Come on up, sir, please.

24 Have a seat, sir, Juror No. 101.

25 (Prospective juror present at sidebar.)

1 THE COURT: Hi.

2 THE PROSPECTIVE JUROR: I am disabled and diabetic
3 and constantly going to doctors.

4 THE COURT: I see. Okay. You have to go to
5 doctors' appointments?

6 THE PROSPECTIVE JUROR: Yes, it is kind of hard for
7 me to get back and forth.

8 THE COURT: I will excuse you, sir. Just go to the
9 jury room and tell them that you are excused.

10 THE PROSPECTIVE JUROR: Thank you.

11 (Prospective juror excused.)

12 THE COURT: No objections to excusing?

13 MS. KASULIS: No.

14 MR. BRAFMAN: No.

15 (In open court.)

16 THE COURT: Juror No. 102, would you have answered
17 yes to any of my questions?

18 THE PROSPECTIVE JUROR: Yes, your Honor.

19 THE COURT: Please come up, sir.

20 (Prospective juror present at sidebar.)

21 THE COURT: Have a seat. Juror No. 102.

22 THE PROSPECTIVE JUROR: How's it going? I have
23 hardship with the four to six weeks thing. I'm recently a
24 college graduate. I got my first full-time job. They have us
25 going through training. The training is going to be in

1 Oklahoma or D.C., and the training is weeks long.

2 THE COURT: You will be out of town during the
3 six-week period?

4 THE PROSPECTIVE JUROR: Yes.

5 (Prospective juror leaves sidebar.)

6 THE COURT: Is there any objection to excusing?

7 MR. BRAFMAN: No, Your Honor.

8 MS. KASULIS: No, Your Honor.

9 (Prospective juror present at sidebar.)

10 THE COURT: I will excuse you. Just go back to the
11 jury room and tell them you are excused.

12 (Prospective juror excused.)

13 THE COURT: Juror No. 103, would you have answered
14 yes to any of my questions?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Come on up, sir, please.

17 (Prospective juror present at sidebar.)

18 THE PROSPECTIVE JUROR: Juror No. 103.

19 THE COURT: What is the issue?

20 THE PROSPECTIVE JUROR: I know about the defendant,
21 like I know what he did, basically he bought the medication
22 and jacked up the price, after that, the indictment came.

23 THE COURT: The charges in this case do not concern
24 pharmaceutical pricing.

25 THE PROSPECTIVE JUROR: Plus negative, where I am

1 already biased against him.

2 THE COURT: All right.

3 THE PROSPECTIVE JUROR: Another issue is about three
4 weeks I have vacations with other people where I have hotels
5 booked up already. If I cancel, they are going to be affected
6 by this, too. That's it.

7 THE COURT: So your vacation is in three weeks?

8 THE PROSPECTIVE JUROR: Uh-hum.

9 THE COURT: We will excuse you, sir. Just go to the
10 jury room and tell them that you are excused from this panel.
11 Maybe they will have something else for you.

12 THE PROSPECTIVE JUROR: All right.

13 THE COURT: Thank you.

14 (Prospective juror leaves sidebar.)

15 THE COURT: I take it no one is observing to 103?

16 MS. KASULIS: No.

17 MR. BRAFMAN: No.

18 (Prospective juror excused.)

19 THE COURT: We will have to start grabbing more
20 jurors.

21 Juror No. 104, would you have answered yes to any of
22 my questions?

23 THE PROSPECTIVE JUROR: No, Your Honor.

24 THE COURT: All right, sir. Please take a seat in
25 what has been previously designated as seat number 27.

1 Juror No. 105, would you have answered yes to any of
2 my questions?

3 THE PROSPECTIVE JUROR: Yes, your Honor.

4 THE COURT: Please come forward.

5 (Prospective juror present at sidebar.)

6 THE COURT: You are Juror No. 105.

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Hello, ma'am.

9 THE PROSPECTIVE JUROR: I have a little anxiety.

10 THE COURT: It is all right. Just be truthful with
11 us. What issues do you want to bring to our attention?

12 THE PROSPECTIVE JUROR: I work ten months out of the
13 year. I work in a school. I work with students on the side.
14 I need the income. Being on this case for that long, I won't
15 get an income.

16 THE COURT: You don't get paid from your job?

17 THE PROSPECTIVE JUROR: No, I'm an aide.

18 THE COURT: You work with students during the summer
19 to make extra money?

20 THE PROSPECTIVE JUROR: Correct.

21 THE COURT: I will excuse you, then. You can go to
22 the jury room and tell them that you are excused.

23 THE PROSPECTIVE JUROR: Okay.

24 THE COURT: Thank you.

25 (Prospective juror excused.)

1 (In open court.)

2 THE COURT: Juror No. 106, would you have answered
3 yes to any of my questions?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Please come up.

6 (Prospective juror present at sidebar.)

7 THE COURT: Hi, ma'am. You are Juror No. 106?

8 THE PROSPECTIVE JUROR: Yes, I am.

9 THE COURT: What would you like to tell me?

10 THE PROSPECTIVE JUROR: I would like to be dismissed
11 from this case because I have a very elderly mom. She's
12 oversees, you know. Six weeks is too long. I guess it is not
13 fair to the jury.

14 THE COURT: Your mother is overseas?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Were you going to visit her?

17 THE PROSPECTIVE JUROR: Yes, yes, yes.

18 THE COURT: When were you leaving?

19 THE PROSPECTIVE JUROR: Probably the end of July,
20 beginning of August, but, you know, in the meantime, she's 97.

21 THE COURT: Have you booked your tickets yet?

22 THE PROSPECTIVE JUROR: No.

23 THE COURT: Would you be able to book your tickets
24 in late August in order to see her then?

25 THE PROSPECTIVE JUROR: Yeah. Unless something else

1 will give me time, because she has a heart condition.

2 THE COURT: I see. You might have to go in a
3 moment's notice.

4 THE PROSPECTIVE JUROR: Exactly, so I don't want to
5 commit myself, but if it was another time.

6 THE COURT: Well, I guess my question is whether you
7 would feel comfortable and would you be able to focus fully on
8 the evidence at the trial and assuming we can get done in six
9 weeks, you can then go see your mother.

10 THE PROSPECTIVE JUROR: Yeah, it's just in the
11 meantime, you never know, every time the phone rings, it's
12 just --

13 THE COURT: Of course. Of course.

14 THE PROSPECTIVE JUROR: Maybe I will go just to see
15 her because I feel like I have mixed feelings about, you know.

16 THE COURT: All right. Let me just ask you to step
17 back for a second.

18 THE PROSPECTIVE JUROR: Sure.

19 (Prospective juror leaves sidebar.)

20 THE COURT: She has no current conflicts right now.

21 MR. BRAFMAN: But she is certainly uneasy about the
22 fact that she is going to have to be here. I would just
23 suggest respectfully that we just let her go.

24 MS. KASULIS: No objection.

25 THE COURT: All right. We will let her go.

1 (Prospective juror present at sidebar.)

2 THE COURT: Ma'am, we will excuse you. If you go
3 back to the jury room and tell them that you are excused from
4 this selection.

5 THE PROSPECTIVE JUROR: Thank you.

6 (Prospective juror excused.)

7 THE COURT: Juror No. 107, would you have answered
8 yes to any of my questions?

9 THE PROSPECTIVE JUROR: No, your Honor.

10 THE COURT: Thank you, ma'am. Juror No. 107, will
11 you take the seat that is designated as seat No. 28.

12 Juror No. 108, would you have answered yes to any of
13 my questions?

14 THE PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: Juror No. 108, please go to the seat
16 designated as seat No. 30.

17 Juror No. 109, sir, would you have answered yes to
18 any of my questions?

19 THE PROSPECTIVE JUROR: Yes, your Honor.

20 THE COURT: Please come forward.

21 (Prospective juror present at sidebar.)

22 THE COURT: Juror No. 109, good afternoon.

23 THE PROSPECTIVE JUROR: Good afternoon.

24 THE COURT: Have a seat.

25 THE PROSPECTIVE JUROR: Yes, to your question, I

1 know something about the case and I would not be able to
2 commit to a six-week trial.

3 THE COURT: Because?

4 THE PROSPECTIVE JUROR: Because I am a manager at
5 brokerage firm, broker-dealer, registered investment advisor,
6 Wall Street firm, and it's a small staff and it would upset
7 our vacation schedule, which, you know, is no small matter at
8 the firm. Obviously for your concerns, it is a little
9 trivial.

10 THE COURT: Nothing is trivial.

11 THE PROSPECTIVE JUROR: It would be an imposition at
12 the firm.

13 THE COURT: Because others --

14 THE PROSPECTIVE JUROR: It is a small staff and we
15 have to cancel vacations in my absence.

16 THE COURT: How large is your staff?

17 THE PROSPECTIVE JUROR: Eight people, but four --
18 four need to be there all the time. One person at a time
19 takes a vacation. We have one of our employees, part of that
20 group of four is currently on disability.

21 THE COURT: So there is already one manager out?

22 THE PROSPECTIVE JUROR: One of my staff out, yes.
23 She will be back -- she had breast cancer. She had surgery
24 and is on disability for six weeks.

25 THE COURT: How many managers are there besides

1 yourself?

2 THE PROSPECTIVE JUROR: In my department, I have an
3 assistant that does fill in for me.

4 THE COURT: All right. Let me ask you to step to
5 the side.

6 THE PROSPECTIVE JUROR: Sure.

7 (Prospective juror leaves sidebar.)

8 MR. BRAFMAN: Your Honor, if the Court is going to
9 excuse the juror, then we don't need to ask any additional
10 questions. The fact that he is an investment advisor makes me
11 want to challenge him for cause because there is going to be
12 an expert in the room, one expert among 12, either way I would
13 challenge him for cause. I think there is a hardship here.
14 You also didn't flesh out what he knows about the case.

15 THE COURT: I didn't go there.

16 MR. BRAFMAN: I would ask you to excuse the juror.

17 THE COURT: Does the Government want to be heard?

18 MS. KASULIS: Your Honor, we don't object to
19 dismissing him but only on the grounds of hardship because of
20 his employment status.

21 MR. BRAFMAN: Either way.

22 THE COURT: I wouldn't dismiss for cause just
23 because I don't have a record to do that.

24 MR. BRAFMAN: Yes, I understand.

25 THE COURT: At this point, other than his own

1 hardship.

2 MR. BRAFMAN: Okay.

3 (Prospective juror present at sidebar.)

4 THE COURT: Sir, I am going to excuse you. Please
5 go to the jury room and tell them that you have been excused
6 from this jury.

7 THE PROSPECTIVE JUROR: Thank you.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Juror No. 110, ma'am, would you have
11 answered yes to any of my questions?

12 THE PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Please go to the seat designated as seat
14 No. 2. I'm sorry, seat No. 32. Seat No. 32, please.

15 (Continued on next page.)
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Side Bar

166

1 (In open court.)

2 THE COURT: Juror Number 111, would you have
3 answered "yes" to any of my questions, ma'am?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Come forward, please.

6 (Side bar continues; prospective juror joins.)

7 THE PROSPECTIVE JUROR: Good afternoon.

8 THE COURT: Have a seat. You are Juror Number 111.

9 THE PROSPECTIVE JUROR: Yes. I have two kids and,
10 like, school is finished and I can't -- I have a 15 year old
11 and a 12 year old. My daughter is leaving on the end of July
12 and I won't leave my son alone unattended by himself all this
13 time.

14 THE COURT: No relatives or friends?

15 THE PROSPECTIVE JUROR: My mother, but she's the one
16 who's leaving with my daughter to Puerto Rico.

17 THE COURT: I see. So the younger child would be
18 alone?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: And there is no one else in the family?

21 THE PROSPECTIVE JUROR: No. My only sister lives in
22 Florida.

23 THE COURT: Very well. Does he have activities for
24 the summer?

25 THE PROSPECTIVE JUROR: No, he's just going to

1 church camp on August 1st through the 4th.

2 THE COURT: Okay. I will excuse you and ask you to
3 go to the jury room and tell them you have been excused. All
4 right, ma'am?

5 THE PROSPECTIVE JUROR: Thank you.

6 THE COURT: No objection to excusing 111?

7 MS. KASULIS: No objection.

8 MR. BRAFMAN: No objection.

9 (Prospective juror excused.)

10 (In open court.)

11 THE COURT: Juror Number 112, sir, would you have
12 answered "yes" to any of my questions?

13 THE PROSPECTIVE JUROR: Yes, Your Honor.

14 THE COURT: Please come forward.

15 (Side bar continues; prospective juror joins.)

16 THE COURT: Hi, sir. Juror Number 112.

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: So what are your issues?

19 THE PROSPECTIVE JUROR: I have no problem serving
20 but the duration is what concerns me. I have a family
21 vacation planned starting the 1st of August already paid for.

22 THE COURT: Not refundable?

23 THE PROSPECTIVE JUROR: Not refundable. I didn't
24 get trip insurance. It's my parents' anniversary. We're
25 flying people in from around the country.

1 THE COURT: Can't change that.

2 THE PROSPECTIVE JUROR: No. I also work in the
3 insurance business and I work on fraud investigations.

4 THE COURT: The only concern is if you would let
5 that influence your ability to be fair and impartial.

6 THE PROSPECTIVE JUROR: Right.

7 THE COURT: But given your family anniversary and
8 parties, I would excuse you.

9 THE PROSPECTIVE JUROR: Okay. Thank you very much.

10 THE COURT: So go to the jury room and tell them you
11 are excused.

12 THE PROSPECTIVE JUROR: Okay. Thank you so much.

13 (Prospective juror excused.)

14 (In open court.)

15 THE COURT: Juror Number 113, would you have
16 answered "yes" to any of my questions?

17 THE PROSPECTIVE JUROR: Yes, Your Honor.

18 THE COURT: Please come forward.

19 (Side bar continues; prospective juror joins.)

20 THE COURT: Please have a seat, Juror Number 113.
21 How are you?

22 THE PROSPECTIVE JUROR: I'm fine. Thank you.

23 THE COURT: What would you like to talk about?

24 THE PROSPECTIVE JUROR: I understand that with jury
25 duty, it has to be paid for and I know we need jurors and as a

1 citizen, I know we have a duty to do that. I don't like to do
2 it because I will always have that problem, God, did I make
3 the right choice, did I judge that person correctly, and --

4 THE COURT: Well --

5 THE PROSPECTIVE JUROR: I know everybody probably
6 feels like that.

7 THE COURT: Jury duty is a big responsibility.

8 THE PROSPECTIVE JUROR: I know.

9 THE COURT: And it is important to decide the case
10 with a fair and open mind.

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: You should not make any decisions about
13 anything in the case until you have heard all of the evidence.

14 THE PROSPECTIVE JUROR: Right.

15 THE COURT: And always strive to keep an open mind
16 and fair mind for both sides.

17 THE PROSPECTIVE JUROR: Right.

18 THE COURT: Now, this case can only be decided based
19 on the evidence presented in the courtroom at trial.

20 THE PROSPECTIVE JUROR: Right.

21 THE COURT: And part of what you do as a juror is
22 deliberate with your fellow jurors and apply the law --

23 THE PROSPECTIVE JUROR: Okay.

24 THE COURT: -- once you find the facts. Now, the
25 question is whether you could do that despite what I

1 acknowledge may be difficult to ask.

2 THE PROSPECTIVE JUROR: Right. I could do that.

3 THE COURT: Could you do it with a fair and open
4 mind?

5 THE PROSPECTIVE JUROR: Fair and open mind, I
6 honestly can do that. I don't like to do it but I can do it.
7 I know that's my duty and if I weigh all the facts and sit
8 still and listen to everything, I would go by the facts, but
9 in my heart, I would still feel was it one little shred of
10 evidence that maybe I was wrong about.

11 THE COURT: Well, we certainly appreciate jurors to
12 be really careful.

13 THE PROSPECTIVE JUROR: Right.

14 THE COURT: These are important decisions. We want
15 the jurors to consider all of the evidence.

16 THE PROSPECTIVE JUROR: Right.

17 THE COURT: And take great care. All right.

18 THE PROSPECTIVE JUROR: I understand.

19 THE COURT: And ultimately, the Government has to
20 prove beyond a reasonable doubt and instruct you as to what
21 that means. They have to prove beyond a reasonable doubt.
22 The jury can have reasonable doubt. That's something that the
23 system accepts.

24 THE PROSPECTIVE JUROR: Right.

25 THE COURT: So, the question is whether you would be

Side Bar

171

1 able to sit as a fair minded, open minded impartial juror.

2 THE PROSPECTIVE JUROR: Would I be able to sit as
3 one? If -- I hate to say it like this. To do it, if I was,
4 like, at a place where I had to do it, could I sit there and
5 honestly weigh all the facts, I can. Open heart, open mind,
6 listening to the evidence, I can.

7 THE COURT: You can?

8 THE PROSPECTIVE JUROR: I can. I can do that.

9 THE COURT: All right.

10 THE PROSPECTIVE JUROR: But my heart still goes --

11 THE COURT: Okay. Let me ask you to stand over to
12 the side right here a minute.

13 THE PROSPECTIVE JUROR: Okay.

14 THE COURT: And I will get right back to you.

15 THE PROSPECTIVE JUROR: Thank you so much.

16 (Prospective juror leaves side bar.)

17 THE COURT: Does anybody have any views about this
18 juror? She seems to be --

19 MR. BRAFMAN: I think she's probably the most honest
20 person we've interviewed all day. I don't think she's
21 presenting a challenge for cause, but I'm not going to fight
22 you on it if the Government moves to challenge for cause.

23 MS. KASULIS: Your Honor, we do move to challenge.
24 I'm concerned she's going to have a hard time following the
25 reasonable doubt instruction the Court will give, so we do

1 move for cause to strike here.

2 THE COURT: All right. No objection?

3 MR. BRAFMAN: Your Honor, I just don't think -- I
4 think the woman is being candid with you. I'm not certain --
5 I'm not going to object, Judge.

6 THE COURT: All right.

7 MR. BRAFMAN: We'll consent.

8 THE COURT: Ma'am, I appreciate your candor and I
9 appreciate your thoughtful answers. We are going to excuse
10 you and ask you to go to the jury room. I would urge you to
11 just think about the important role that jurors play.

12 THE PROSPECTIVE JUROR: I know.

13 THE COURT: It's never an easy question and we want
14 thoughtful people.

15 THE PROSPECTIVE JUROR: And I do apologize for that.

16 THE COURT: Don't apologize for being thoughtful and
17 honest.

18 THE PROSPECTIVE JUROR: All right. Thank you.

19 (Prospective juror excused.)

20 (In open court.)

21 THE COURT: Juror Number 114, sir, would you have
22 answered "yes" to any of my questions?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Come forward, please.

25 (Side bar continues; prospective juror joins.)

1 THE COURT: Have a seat. Juror Number 114, good
2 afternoon. Have a seat. What can you tell us?

3 THE PROSPECTIVE JUROR: We're going away on the 1st
4 of August. Certainly, the work, it would cripple me
5 financially. I won't be here for the end of trial either.

6 THE COURT: You don't get paid for jury service?

7 THE PROSPECTIVE JUROR: I think it's personal
8 credits and I don't have enough covered on full time.

9 THE COURT: Okay. All right. Well, I think we'll
10 have to excuse you then.

11 THE PROSPECTIVE JUROR: Okay.

12 THE COURT: All right. So, thank you. Just go to
13 the jury room and tell them that you are excused from this
14 panel.

15 THE PROSPECTIVE JUROR: All right. Thank you.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Juror Number 116, would you have
19 answered "yes" to any of my questions?

20 THE PROSPECTIVE JUROR: Yes, Your Honor.

21 MR. BRAFMAN: Did we skip 115?

22 MS. KASULIS: They didn't show up.

23 THE COURT: It was a no-show.

24 (Side bar continues; prospective juror joins.)

25 THE COURT: Hi, ma'am. Juror Number 116. Have a

1 seat. Yes. Hello.

2 THE PROSPECTIVE JUROR: Hello.

3 THE COURT: What would you like to tell me?

4 THE PROSPECTIVE JUROR: My daughter is graduating
5 from pre-K tomorrow. My oldest is graduating from elementary
6 school on Wednesday. Then the two smallest ones, the three
7 and the five-year old, are in summer school, in a summer camp.
8 So I had to push my work hours to start at 9 so I could take
9 them to school because they start late and I don't have
10 anybody to take them in the morning. Now, if I had to hire it
11 out, it would cost me more and I can't afford it.

12 THE COURT: Okay.

13 THE PROSPECTIVE JUROR: That's an issue. The summer
14 school is for six weeks, next six weeks.

15 THE COURT: And they start summer school later in
16 the week?

17 THE PROSPECTIVE JUROR: Yes. Yes, right after the
18 holiday week.

19 THE COURT: And there's no one else in the family
20 who can take the children?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Or a neighbor?

23 THE PROSPECTIVE JUROR: No, I don't have nobody.

24 THE COURT: Okay. I will excuse you and you can go
25 down to the jury room.

Side Bar

175

1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: And tell them that you are excused from
3 this panel. All right?

4 THE PROSPECTIVE JUROR: Thank Your Honor.

5 (Prospective juror excused.)

6 THE COURT: No objections to excusing 116?

7 MS. KASULIS: No objection.

8 MR. BRAFMAN: None.

9 (In open court.)

10 THE COURT: Juror Number 117, sir, would you have
11 answered "yes" to any of my questions?

12 THE PROSPECTIVE JUROR: Yes, ma'am.

13 THE COURT: Please come forward.

14 (Side bar continues; prospective juror joins.)

15 THE COURT: Hi, Juror Number 117. Come forward.

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: How are you?

18 THE PROSPECTIVE JUROR: Good. And you?

19 THE COURT: I'm well. Thanks.

20 So, what would you like to tell me?

21 THE PROSPECTIVE JUROR: I read a lot about it in the
22 news and I don't believe that I can be unbiased based on what
23 I've read about this and about the drug hikes.

24 THE COURT: Okay.

25 THE PROSPECTIVE JUROR: And I don't feel that that

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Side Bar

176

1 would be, I could be fair.

2 THE COURT: Okay. All right. I will excuse you
3 then, sir.

4 THE PROSPECTIVE JUROR: Thank you.

5 THE COURT: All right. Please go to the jury room
6 on the second floor and tell them I have excused you.

7 THE PROSPECTIVE JUROR: Yes, ma'am.

8 (Prospective juror excused.)

9 (In open court.)

10 THE COURT: Juror Number 118, would you have
11 answered "yes" to any of my questions?

12 THE PROSPECTIVE JUROR: Yes, Your Honor.

13 THE COURT: Come forward, please.

14 (Side bar continues; prospective juror joins.)

15 THE COURT: Come on up, sir. Juror Number 118, how
16 are you?

17 THE PROSPECTIVE JUROR: Okay.

18 THE COURT: What would you like to tell me?

19 THE PROSPECTIVE JUROR: Well, I have a job
20 interview, second job interview next Monday. I have a good
21 shot for it. So, if I get it, I would have to start by July
22 and this case is six weeks, four to six weeks.

23 THE COURT: Well, I wouldn't want to foreclose you
24 from having a job prospect so I will excuse you.

25 THE PROSPECTIVE JUROR: All right.

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1 THE COURT: All right, sir?

2 THE PROSPECTIVE JUROR: Do I go outside?

3 THE COURT: Go to the jury room, tell them you are
4 excused and they will give you your paperwork.

5 THE PROSPECTIVE JUROR: All right.

6 THE COURT: No objection?

7 MS. SMITH: No objection.

8 MR. BRAFMAN: No objection.

9 (Prospective juror excused.)

10 (In open court.)

11 THE COURT: Juror Number 119, would you have
12 answered "yes" to any of my questions?

13 THE PROSPECTIVE JUROR: Yes, Your Honor.

14 THE COURT: Come up, please.

15 (Side bar continues.)

16 THE COURT: We are going to have to start over if we
17 don't get to 40.

18 (Prospective juror joins side bar.)

19 THE COURT: Hello, Juror 119. How are you?

20 THE PROSPECTIVE JUROR: Good. You?

21 THE COURT: I'm well. Thanks.

22 What would you like to tell me.

23 THE PROSPECTIVE JUROR: Just the fact that I would
24 have scheduling conflicts because I'm supposed to be going on
25 vacation from July 1st to July 8th. Also, I'm a student right

1 now and I'm trying to, like, work over the summer so I can
2 help pay my tuition. So, just \$40 a day doesn't really help.

3 THE COURT: Understood. So you're looking for a job
4 for the summer?

5 THE PROSPECTIVE JUROR: I'm already working.

6 THE COURT: Okay. Would your employer pay you while
7 you're serving jury duty?

8 THE PROSPECTIVE JUROR: Probably not considering I'm
9 only seasonal.

10 THE COURT: Do you know what your employer's policy
11 is?

12 THE PROSPECTIVE JUROR: I honestly do not.

13 THE COURT: And can you tell me a little bit more
14 about your vacation? Is it flexible?

15 THE PROSPECTIVE JUROR: No. I've already sent in a
16 deposit. It's nonrefundable.

17 THE COURT: Okay. All right. Well, we will excuse
18 you then.

19 THE PROSPECTIVE JUROR: Thank you so much.

20 THE COURT: Please go to the jury room and tell them
21 you are excused.

22 THE PROSPECTIVE JUROR: Thank you.

23 THE COURT: No objection to excusing 119?

24 MS. KASULIS: No.

25 MR. BRAFMAN: No, Your Honor.

Side Bar

179

1 (Prospective juror excused.)

2 (In open court.)

3 THE COURT: Juror Number 120, would you have
4 answered "yes" to any of my questions?

5 THE PROSPECTIVE JUROR: No, Your Honor.

6 THE COURT: All right. Sir, let me ask you, please,
7 to take the seat which would be number 34.

8 Juror Number 121, would you have answered "yes" to
9 any of my questions?

10 THE PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: Please come forward, ma'am.

12 (Side bar continues; prospective juror joins.)

13 THE COURT: Hello, Juror Number 121. How are you?

14 THE PROSPECTIVE JUROR: Yes. It's a financial
15 situation because from work, I'm not going to be getting paid
16 at all.

17 THE COURT: At all?

18 THE PROSPECTIVE JUROR: What I'm paid, they pay \$40
19 which means, you know, that's -- I guess, maybe at some point,
20 I don't know what it was, but that's what they said. Now, I'm
21 right now unfortunately in a situation where I'm living
22 paycheck to paycheck. I have a brother, he has six kids.
23 He's being denied Government help. My mother just a couple of
24 months ago started a remission period also. My parents, in
25 general, the last few years have been in financial trouble.

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Side Bar

180

1 They have a lot of medical expenses. Is it right or wrong
2 that I got myself into debt to help them? That's a different
3 story, but that's where I'm standing right now and I don't see
4 myself doing that for six weeks.

5 THE COURT: That's fine, ma'am. We will excuse you.

6 THE PROSPECTIVE JUROR: Thank you.

7 THE COURT: All the best to you.

8 THE PROSPECTIVE JUROR: Thank you.

9 (Prospective juror excused.)

10 (In open court.)

11 THE COURT: Juror Number 122, would you have
12 answered "yes" to any of my questions?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Come forward, please.

15 (Side bar continues; prospective juror joins.)

16 THE COURT: Hello, Juror Number 122. Have a seat.

17 THE PROSPECTIVE JUROR: Thank you.

18 THE COURT: All right. What would you like to tell
19 us?

20 THE PROSPECTIVE JUROR: I'm sorry but sometimes I
21 can't understand.

22 THE COURT: Sometimes you don't understand?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: How long have you been in this country,
25 sir?

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1 How long have you been in America?

2 THE PROSPECTIVE JUROR: America? Four years.

3 THE COURT: Four years?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Did you study English at any time?

6 THE PROSPECTIVE JUROR: Just a little bit.

7 THE COURT: Just a little bit. What do you do for a
8 living?

9 THE PROSPECTIVE JUROR: I'm sorry. I don't
10 understand.

11 THE COURT: What do you do for work? What is your
12 job?

13 THE PROSPECTIVE JUROR: Driving.

14 THE COURT: A driver?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: All right. Let me ask you to just step
17 back over here. Do you speak English on your job?

18 THE PROSPECTIVE JUROR: Just a little bit. Just a
19 little.

20 THE COURT: Who do you drive for?

21 THE PROSPECTIVE JUROR: I'm sorry?

22 THE COURT: You said you're a driver. Who is your
23 employer? Who do you work for?

24 THE PROSPECTIVE JUROR: Container.

25 THE COURT: Container?

Side Bar

182

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Let me have you step back for a minute.

3 Thank you.

4 (Prospective juror leaves side bar.)

5 THE COURT: I think we have --

6 MR. BRAFMAN: I would consent, Judge.

7 THE COURT: Yes. We will on consent dismiss Juror
8 Number 122.

9 (Prospective juror joins side bar.)

10 THE COURT: Sir?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: We will excuse you. Please go down to
13 the jury room, the jury room where you checked in this
14 morning. Tell them you are excused and they will give you a
15 paper.

16 THE PROSPECTIVE JUROR: Thank you.

17 (Prospective juror excused.)

18 (In open court.)

19 THE COURT: Juror Number 123, sir, would you have
20 answered "yes" to any of my questions?

21 THE PROSPECTIVE JUROR: Yes, Your Honor.

22 THE COURT: All right. Come forward, please.

23 (Side bar continues; prospective juror joins.)

24 THE COURT: Hi, sir. You are Juror Number 123?

25 THE PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: What would you like to tell me?

2 THE PROSPECTIVE JUROR: My English, very poor.

3 THE COURT: How long have you been in the United
4 States?

5 THE PROSPECTIVE JUROR: Like 29 years.

6 THE COURT: Twenty-nine years?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: What is your job?

9 THE PROSPECTIVE JUROR: A business.

10 THE COURT: What kind of business?

11 THE PROSPECTIVE JUROR: Retail business.

12 THE COURT: What do you sell?

13 THE PROSPECTIVE JUROR: Perfumes.

14 THE COURT: Perfumes. All right. Do you in your
15 job speak with suppliers or customers?

16 THE PROSPECTIVE JUROR: No. They tell me, but not
17 like this. Just this stuff I don't understand.

18 THE COURT: But do you speak English in your job to
19 your supplier?

20 THE PROSPECTIVE JUROR: Yes, English and different
21 language.

22 THE COURT: And do you order your products in
23 English? Do you conduct your business --

24 THE PROSPECTIVE JUROR: I go and pick up from the
25 distributor.

Side Bar

184

1 THE COURT: All right. But you speak to them in
2 English or some other language?

3 THE PROSPECTIVE JUROR: No, I know people, some
4 people, like Indian people, some of them, distributors, I know
5 them and some are.

6 THE COURT: All right. Let me ask you to step back
7 over there just for a moment, please.

8 THE PROSPECTIVE JUROR: All right.
9 (Prospective juror leaves side bar.)

10 THE COURT: All right. Does anybody want to be
11 heard? He's been in the country for 29 years.

12 MR. BRAFMAN: The problem with people who insist
13 that they don't understand is that how you question them to
14 make it clear that they do understand. I'm not certain it's
15 worth it. I would consent to it.

16 THE COURT: All right. Any objections to dismissing
17 Juror 123?

18 MS. KASULIS: No, Your Honor.

19 THE COURT: All right.
20 (Prospective juror joins side bar.)

21 THE COURT: We're going to excuse you, sir. You're
22 excused. Please go to the jury room and tell them you're
23 excused.

24 THE PROSPECTIVE JUROR: Thank you.
25 (Prospective juror excused.)

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Side Bar

185

1 (In open court.)

2 THE COURT: Juror 124, ma'am, would you have
3 answered "yes" to any of my questions?

4 THE PROSPECTIVE JUROR: Yes, Your Honor.

5 THE COURT: Please come forward.

6 (Side bar continues; prospective juror joins.)

7 THE COURT: Hello, ma'am. Have a seat. Juror
8 Number 124, what would you like to tell us?

9 THE PROSPECTIVE JUROR: I don't think my boss is
10 going to be paying me four to six weeks.

11 THE COURT: What kind of place do you work?

12 THE PROSPECTIVE JUROR: I work for a lawyers
13 service.

14 THE COURT: A lawyers service?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you know what their policy is for
17 jury service?

18 THE PROSPECTIVE JUROR: I guess he would pay me for
19 maybe two weeks, but I don't think he's going to pay me for
20 four to six.

21 THE COURT: Is there an official policy on that?

22 THE PROSPECTIVE JUROR: No, I don't think so.

23 THE COURT: All right. Do you think your employer
24 would be open to a phone call if I asked would you be able to
25 serve and he would pay you or do you think that would change

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Side Bar

186

1 anything?

2 THE PROSPECTIVE JUROR: I don't think so.

3 THE COURT: No? All right. Let me ask you to step
4 over to the side for one moment.

5 (Prospective juror leaves side bar.)

6 THE COURT: Does anybody object to excusing her?

7 MR. BRAFMAN: No, Your Honor.

8 MS. KASULIS: No, Your Honor.

9 THE COURT: We are getting down to the end here.

10 (Prospective juror joins side bar.)

11 THE COURT: Ma'am, we will excuse you. Please go to
12 the jury room and tell them you have been excused. All right?
13 Thank you.

14 (Prospective juror excused.)

15 (In open court.)

16 THE COURT: Juror Number 125, sir, would you answer
17 "yes" to any of my questions?

18 THE PROSPECTIVE JUROR: Yes, Your Honor.

19 THE COURT: All right. Come forward, please.

20 (Side bar continues; prospective juror joins.)

21 THE COURT: Hello, Juror Number 125.

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. What would you like to tell
24 us?

25 THE PROSPECTIVE JUROR: Well, I've read extensively

1 about Martin's shameful past and his dealing with
2 pharmaceutical companies and ripping off sick people and I
3 don't -- it hits close to me. I have a mother with epilepsy,
4 a grandmother with Alzheimer's and a brother with multiple
5 sclerosis. So, I think somebody that's dealt in those things
6 deserves to go to jail.

7 THE COURT: All right. Just to be clear, he's not
8 being charged with anything in the law relating to the pricing
9 of pharmaceuticals.

10 THE PROSPECTIVE JUROR: I understand that, but it
11 puts me at a biased position where I already sense the man is
12 guilty.

13 THE COURT: All right. Well, I'm going to excuse
14 you.

15 THE PROSPECTIVE JUROR: Thank you.

16 THE COURT: You should go to the jury room.

17 THE PROSPECTIVE JUROR: Thank you, Your Honor.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Juror Number 126, ma'am, would you have
21 answered "yes" to any of my questions?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Yes? Come forward, please.

24 (Side bar continues; prospective juror joins.)

25 THE COURT: Juror Number 126, nice to see you ma'am.

1 THE PROSPECTIVE JUROR: Hi. Good afternoon.

2 THE COURT: How are you?

3 THE PROSPECTIVE JUROR: Okay.

4 THE COURT: What can you tell me?

5 THE PROSPECTIVE JUROR: Well, in answer to your
6 question regarding the duration of the trial.

7 THE COURT: Yes, ma'am.

8 THE PROSPECTIVE JUROR: To serve on a jury for six
9 weeks would create a good hardship and a lot of distress.

10 THE COURT: Can you tell me what your circumstances
11 are that leads you to that situation?

12 THE PROSPECTIVE JUROR: Right now, I'm working as a
13 contractor for the health system and I am the department's
14 software designer and only designer for the division and at
15 this point, we're involved with a lot of installations and my
16 role is database collector and corporate trainer. There's a
17 lot of lot of backlog, distress, and it would be very
18 difficult.

19 THE COURT: So there is nobody else in your
20 organization that can do this?

21 THE PROSPECTIVE JUROR: No. And actually, I
22 notified my manager on Friday when I got called that I had to
23 report for service and they tried to attempt to get a
24 temporary person to come in.

25 THE COURT: They're not --

Side Bar

189

1 THE PROSPECTIVE JUROR: They will.

2 THE COURT: They will? All right. Well, will your
3 employer pay you during the time on jury service?

4 THE PROSPECTIVE JUROR: No, I'm a contractor.

5 THE COURT: I see.

6 THE PROSPECTIVE JUROR: That's the issue there. If
7 it's four or five days, I would be more than happy to serve,
8 but this creates an issue for me.

9 THE COURT: All right. Well, I would excuse you but
10 ask you to go to the jury room and tell them you might be able
11 to serve for a shorter trial.

12 THE PROSPECTIVE JUROR: Absolutely.

13 THE COURT: And they will let you know what to do.

14 THE PROSPECTIVE JUROR: Thank you, ma'am.

15 (Prospective juror excused.)

16 (In open court.)

17 THE COURT: All right. Juror Number 127, ma'am,
18 would you have answered "yes" to any of my questions?

19 THE PROSPECTIVE JUROR: Yes, Your Honor.

20 THE COURT: Come forward, please, ma'am.

21 (Side bar continues; prospective juror joins.)

22 THE COURT: Hello, Juror Number 127. How are you?

23 THE PROSPECTIVE JUROR: I'm good.

24 THE COURT: Have a seat. What would you like to
25 tell me?

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1 THE PROSPECTIVE JUROR: I feel a bias because I've
2 worked for two securities companies right on the New York
3 Stock Exchange and my husband currently works for FINRA, the
4 regulatory that does securities, so I think I'll be prejudiced
5 and biased.

6 THE COURT: You would be biased against one party?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: All right. So, you don't think that you
9 could set aside anything that you know based on your own job
10 or husband's job?

11 THE PROSPECTIVE JUROR: No, because I personally
12 worked on the New York Stock Exchange floor and I thought that
13 I did not appreciate or believe him. So, yes, I would be
14 biased.

15 THE COURT: Okay. All right. I am going to excuse
16 you. Please go to the jury room and tell them you have been
17 excused.

18 THE PROSPECTIVE JUROR: Okay. So I can leave?

19 THE COURT: You can take all your things and go to
20 the jury room. You are excused.

21 THE PROSPECTIVE JUROR: Thank you.

22 (Prospective juror excused.)

23 (In open court.)

24 THE COURT: Juror Number 128, ma'am, would you have
25 answered "yes" to any of my questions? Yes? Come forward,

Side Bar

191

1 please.

2 (Side bar continues.)

3 THE COURT: I will talk to you about how we proceed
4 once we run through Juror 130. If we need more, then we
5 will --

6 MS. KASULIS: Do we have --

7 THE COURT: We have four spots left and three
8 jurors.

9 (Prospective juror joins side bar.)

10 THE COURT: Hello, ma'am.

11 THE PROSPECTIVE JUROR: Hello.

12 THE COURT: Juror Number 128, have a seat. How are
13 you?

14 THE PROSPECTIVE JUROR: I'm good.

15 THE COURT: All right. What would you like to tell
16 us?

17 THE PROSPECTIVE JUROR: One thing is I already think
18 he did this. That's problems. Second thing is the English is
19 my second language. I'm not sure if I would be fit for this
20 kind of case, for duty.

21 THE COURT: All right. Well, what we ask every
22 juror to do is to keep an open mind.

23 THE DEFENDANT: Yes.

24 THE COURT: A fair mind. Right? So keep an open
25 mind, listen to all the evidence and not make any decisions

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1 until you are called upon to deliberate.

2 So, could you separate any initial feelings you have
3 and listen to the evidence carefully and make your decision
4 based only on the evidence at trial and apply the law?

5 THE PROSPECTIVE JUROR: I should try, but as I told
6 you, my English is my second language. I'm not so sure that I
7 would understand this kind of case because I know more like,
8 you know, simple English language.

9 THE COURT: You speak very well. I feel that we're
10 conversing without any problems, but let me ask you this. How
11 long have you been in the United States?

12 THE PROSPECTIVE JUROR: Twenty years.

13 THE COURT: And what have you done for a job?

14 THE PROSPECTIVE JUROR: I'm working with my husband.
15 He has a business and I'm working as a secretary in a small
16 company, eleven, twelve employees.

17 THE COURT: And do you speak English on your job to
18 outside people?

19 THE PROSPECTIVE JUROR: Just outside on the phone,
20 customers.

21 THE COURT: Okay. All right. I am going to excuse
22 you, ma'am.

23 THE PROSPECTIVE JUROR: Thank you.

24 THE COURT: So, go to the jury room where you
25 checked in this morning and tell them you've been excused.

Side Bar

193

1 THE PROSPECTIVE JUROR: All right.

2 THE COURT: Thank you.

3 MS. KASULIS: No objection.

4 MR. BRAFMAN: No objection.

5 (Prospective juror excused.)

6 (In open court.)

7 THE COURT: Juror Number 129, sir, would you have
8 answered "yes" to any of my questions?

9 THE PROSPECTIVE JUROR: Yes, Your Honor.

10 THE COURT: Please come forward.

11 (Side bar continues; prospective juror joins.)

12 THE COURT: Come up, sir. Number 129, how are you?

13 THE PROSPECTIVE JUROR: How you doing?

14 THE COURT: I'm well, thanks. Would what you like
15 to tell me?

16 THE PROSPECTIVE JUROR: First, I cannot concentrate
17 because my daughter has been missing for, like, ten days so I
18 just got her back. And then I have a doctor's appointment,
19 urology, on July 10th and then I've got a trip planned for
20 July 21st through the 31st, so I cannot make it.

21 THE COURT: All right. We will excuse you then,
22 sir.

23 THE PROSPECTIVE JUROR: Thank you very much.

24 THE COURT: Please go to the jury room.

25 No objection to excusing Juror 129?

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Side Bar

194

1 MR. BRAFMAN: No.

2 MS. KASULIS: None.

3 (Prospective juror excused.)

4 (In open court.)

5 THE COURT: Juror Number 130, would you have

6 answered "yes" to any of my questions?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: All right. Please come forward.

9 (Side bar continues; prospective juror joins.)

10 THE COURT: Have a seat. All right. Hi, how are
11 you, Juror Number 130?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: What would you like to tell us?

14 THE PROSPECTIVE JUROR: I'm a little nervous.

15 THE COURT: Don't be nervous.

16 THE PROSPECTIVE JUROR: I'm very nervous and my
17 heart is just palpitating very fast.

18 THE COURT: Don't be nervous. We need to hear your
19 answers so don't be afraid.

20 THE PROSPECTIVE JUROR: I just rather not serve
21 here.

22 THE COURT: You don't want to serve?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Well, is it something about this
25 case or just general jury duty?

CMH

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1 THE PROSPECTIVE JUROR: Well, normally, when they
2 call me for cases, I get really nervous and it just affects me
3 in a negative way.

4 THE COURT: Criminal cases?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. You're just not feeling
7 well?

8 THE PROSPECTIVE JUROR: No. My heart races very
9 fast.

10 THE COURT: All right.

11 THE PROSPECTIVE JUROR: I just want to share that
12 with you guys.

13 THE COURT: Okay.

14 THE PROSPECTIVE JUROR: The decision would be it's
15 hard for me.

16 THE COURT: It's important for you to be honest with
17 us and so you don't think you would be able to focus on the
18 evidence?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: All right.

21 THE PROSPECTIVE JUROR: Because I get so nervous, I
22 can't explain it. It just -- everything starts to race, my
23 whole body.

24 THE COURT: Okay. All right. Well, I will excuse
25 you from this case. You can go to the jury room and tell

1 them. Maybe there is a civil case that won't cause the same
2 level of anxiety.

3 THE PROSPECTIVE JUROR: Okay.

4 THE COURT: Thank you.

5 THE PROSPECTIVE JUROR: Thank you so much. I
6 appreciate it.

7 (Prospective juror excused.)

8 THE COURT: So what we are going to have to do is
9 call 40 new people. We are going to have to start the
10 questions over up to where we were and go through the same
11 thing. I could let these jurors who are in the seats go or
12 torture them and have them go through this questioning again.
13 My preference would be probably to let them go home and ask
14 them to come back to the jury room tomorrow morning at 9.

15 MR. BRAFMAN: That's fine.

16 THE COURT: And we will continue with the 40 new
17 ones.

18 MR. BRAFMAN: That's fine. Can we take a
19 five-minute break?

20 THE COURT: Yes. Do you want me to make the
21 announcement?

22 MR. BRAFMAN: You can make the announcement, sure.
23 I want to be able to step back after they leave. Thank you.

24 (Continued on next page.)
25

Jury Selection

197

1 (Continuing)

2 (In open court.)

3 THE COURT: For those of you who are currently in a
4 seat, I want to thank you. I'm going to excuse you for today
5 and ask you to come back tomorrow morning. If you came back
6 tomorrow morning at 9:30 and check in with the jury clerks
7 where you checked in initially, that should be fine.

8 Please do not research, talk about, or allow anyone
9 to talk to you about this case. If you are asked what you
10 have been doing here today, you can say that you are going
11 through a jury selection process. Do not speak about the
12 case, don't mention the name about the case, do not listen to
13 any news reports that may touch upon anything relating to this
14 case. If something pops up on your phone or your computer or
15 your news television, do not listen to it, do not read it,
16 please.

17 Don't allow anyone to speak to you. And I would ask
18 you again not to take offense if anyone in this room doesn't
19 say hello to you. Don't talk about the case with anyone.

20 So, I appreciate your time and attention thus far.
21 We will have to continue this process this afternoon, but at
22 this point you may be excused, just please return tomorrow
23 morning. Make sure you get here no later than 9:30. You'll
24 go to the jury room, you'll check in, and we will make sure
25 that all of you are present before we continue.

Proceedings

198

1 Thank you and have a good night.

2 (Prospective jurors excused.)

3 THE COURT: Everyone can have a seat. What we're
4 doing is distributing lists of 40 additional jurors.

5 Unfortunately, they're numbered 1 through 40 again.

6 Hopefully, you won't get confused. Maybe you want to take a
7 moment and start numbering --

8 MR. BRAFMAN: Can I step out for a moment, Judge?

9 THE COURT: Yes. We'll take a break if anyone needs
10 a break.

11 (Pause in proceedings.)

12 THE COURT: Counsel, I'm thinking we might get more
13 than 40 just because as we proceed through questioning, we may
14 lose more and have to slot in other jurors. We only need four
15 more to get to 40, but beyond that we may have people being
16 excused along the way. So, I'm going to see if we can get 50
17 more instead.

18 We'll get you a new list if that happens. I think
19 it's better to be safe than sorry.

20 (Pause in proceedings.)

21 THE COURT: The other thing, because they'll have
22 naturalization ceremony here tomorrow, we'll probably shift up
23 to my courtroom and continue the jury selection there.

24 We're going to seat the next 40 in the same seats,
25 continuing up to Seat 40, and continue from there.

Jury Selection

199

1 (Prospective jurors enter.)

2 THE COURT: Juror No. 1, sit here. Good afternoon.
3 Have a seat.

4 One through ten in the front row, please. In order.
5 (Pause in proceedings.)

6 THE COURT: We're just waiting for ten more and then
7 we'll get started.

8 (Pause in proceedings.)

9 THE COURT: Good afternoon, ladies and gentlemen.
10 Welcome. Thank you for your patience. I'm Judge Kiyo
11 Matsumoto, my law clerk Vivek Tata is to my left, and my case
12 manager Sandra Jackson sits in front of me to my left.

13 Can everybody hear me? If not, please raise your
14 hand. Thank you.

15 Please do pay close attention as I go through these
16 instructions and questions and do not speak with anybody about
17 this case, including other potential jurors.

18 You are here today because we are about to select a
19 jury in a criminal case. Trial is expected to last six weeks.
20 It will commence tomorrow morning or in the afternoon. We
21 will not hold trial on Monday, July 3, or Tuesday, July 4.

22 Fortunately, this particular case promises to be
23 interesting and educational for all of you who are selected to
24 serve.

25 This is a criminal case commenced by the United

Jury Selection

200

1 States, which is frequently going to be referred to as the
2 "Government." Representing the United States are Assistant
3 United States Attorneys Jacquelyn Kasulis, Alixandra Smith,
4 and G. Karthik Srinivasin. Also seated at the Government
5 table Special Agents Michael Braconi and Sean Sweeney from the
6 Federal Bureau of Investigation and paralegal specialist
7 Gabriela Balbin.

8 The Defendant in this case is Martin Shkreli.
9 Representing Mr. Shkreli are attorneys Benjamin Brafman, Mark
10 Agnifilo, Andrea Zellan, Jacob Kaplan --

11 MR. AGNIFILO: He just stepped out.

12 THE COURT: Well, once he comes back, he's the
13 gentleman in the dark suit.

14 And they will also be joined later in the trial by
15 Teny Geragos.

16 The fact that this prosecution is brought in the
17 name of the United States does not entitle the Government to
18 any greater consideration than any other party who appears in
19 court. All parties, the Government, and individuals are
20 equals before the Court and all are entitled to equal
21 consideration. No party is entitled to sympathy or favor.

22 The purpose of jury selection is to ensure fairness
23 and impartiality to all parties in this case. The way we try
24 to ensure that a jury will be fair and impartial is by going
25 through a process called "voir dire." Basically, I will be

Jury Selection

201

1 asking you questions both as a group and individually about
2 your background and your views on certain subjects. It is not
3 my intention to invade your privacy but simply to try to make
4 sure that you can sit fairly and impartially on this
5 particular case. At times -- and I know so far it has been
6 tedious, and I appreciate your patience. I ask you please to
7 continue to bear with me.

8 If in the course of this questioning process you do
9 think that because of some experience that you have had in
10 your life or because of something you have heard or read, that
11 you could not be fair and impartial -- that is, that you would
12 be inclined towards the Government or the Defendant regardless
13 of what the evidence showed -- it is your duty to tell me
14 that. That is because the Government and the Defendant have a
15 right to a qualified, impartial jury; one that will decide the
16 case without fear, favor, prejudice, or passion and will
17 render a verdict based solely on the evidence presented at the
18 trial and the law as I give it to you.

19 Now, quite apart from whether or not I must excuse
20 you, the lawyers for the parties are entitled to exercise a
21 certain number of what are called "peremptory challenges,"
22 which means they may excuse a certain number of prospective
23 jurors without giving any reason. If you are excused, no
24 personal affront is intended.

25 It is important to listen to all of the questions I

Jury Selection

202

1 ask because the answers that you give to the Court will be
2 under oath. I will now ask Ms. Jackson to administer an oath
3 to all of you. Please raise your right hand.

4 (Prospective jurors sworn.)

5 THE COURT: Thank you.

6 Now, as I said, this criminal case comes before the
7 Court by way of an indictment. The indictment is captioned
8 United States of America against Martin Shkreli. Let me
9 advise you that the indictment is simply a document that the
10 Government uses to state the charges against a defendant. It
11 serves no other purpose and it is not evidence.

12 I'm going to summarize the charges in the indictment
13 so that you can understand what this case will be about. But,
14 again, remember that any evidence pertaining to these charges
15 will come before you only when we begin the actual trial.

16 In summary, the indictment charges the Defendant,
17 Martin Shkreli, in an eight-count indictment with committing
18 various acts of securities fraud, conspiracy to commit
19 securities fraud, and conspiracy to commit wire fraud.

20 In Counts One through Three, Mr. Shkreli is charged
21 with conspiracy to commit securities fraud, conspiracy to
22 commit wire fraud, and a substantive count of securities fraud
23 in relation to an entity known as MSMB Capital.

24 In Counts Four through Six, Mr. Shkreli is charged
25 with conspiracy to commit securities fraud, conspiracy to

Jury Selection

203

1 commit wire fraud, and a substantive count of securities fraud
2 in relation to MSMB Healthcare.

3 In Counts Seven and Eight, Mr. Shkreli is charged
4 with conspiracy to commit securities fraud and conspiracy to
5 commit wire fraud in relation to an entity known as Retrophin.

6 Now, the Defendant has pleaded not guilty to all of
7 the charges in the indictment and, thus, has raised issues of
8 fact to be determined by the jury. Let me now advise you that
9 it is the Government that has the burden of proof in any
10 criminal case to establish a defendant's guilt beyond a
11 reasonable doubt as to each element of each charged offense.
12 The Defendant is presumed throughout the trial to be innocent.

13 In that regard, the Defendant has no burden
14 whatsoever to present any evidence or to testify. Because the
15 United States Constitution protects a defendant's right to
16 remain silent, the law prohibits you from considering when you
17 deliberate that the defendant may not have testified. This is
18 a basic principal of our criminal justice system.

19 The role of the jury in a criminal case is to hear
20 the evidence and decide the facts; that is, to decide what
21 happened. The judge does not play any role in your
22 determination of the facts. As the judge, my sole role is to
23 instruct you on the applicable application of the law. You
24 will apply the facts as you find them to the law as I instruct
25 you and your conclusion will be your verdict. You must apply

Jury Selection

204

1 the law as stated by me, regardless of any opinion that you
2 may have as to what the law is or should be. And if any of
3 you would have any difficulty doing this, you must bring that
4 to my attention.

5 Now, all of you have been placed in seats that we've
6 numbered Seats 1 through 40. I'm going to ask those in Seats
7 1 through 40 questions. Again, your answers must be candid
8 and they are under oath. For example, I will ask the jurors
9 at some point whether they know any of the attorneys or
10 parties in this case.

11 (Pause in proceedings.)

12 THE COURT: For all of you, please, I ask you to
13 listen carefully to my questions, even those of you who aren't
14 seated in a numbered seat. And the reason is that because if
15 any of the jurors in seats numbered 1 through 40 are excused
16 for any reason, you may be called from rows -- from those of
17 you up to number 50, in Seat 50, to replace that juror.

18 If that happens, I will not repeat all of my
19 questions but, rather, I will ask you whether any of your
20 answers to my questions would have been yes. So, it is
21 important that you listen throughout to all questions and keep
22 track in your mind of any questions to which you would have
23 answered yes. It is important also for you to listen
24 carefully to the questions and, consistent with the oath that
25 you have just taken, answer my questions as honestly and

Jury Selection

205

1 conscientiously and completely and truthfully as you can.

2 When I ask these questions, I ask that if your
3 answer to any question is yes, that you raise your hand. For
4 most of the questions to which you answer yes, I will ask you
5 to come to sidebar, which is an area over here to my right,
6 out of the hearing of the rest of the jurors. For questions
7 of a personal or private nature, I may ask if you would answer
8 those questions out of the hearing of the rest of the jury
9 panel.

10 And I also want to find out whether any of you would
11 have any difficulty deciding this case fairly. It will be
12 important for you to answer honestly. And, if so, we will do
13 so at sidebar.

14 Because judicial proceedings are open and public,
15 one press reporter will also be present at the sidebar. If I
16 ask you to come to the sidebar to discuss your answer further,
17 I will not ask your name. I will refer to all of you with
18 numbers. Your answers will not be associated in any manner
19 with your name.

20 It is critical to the parties' right to a fair trial
21 that all jurors be candid and truthful in answering my
22 questions. If there are any questions you do not feel
23 comfortable discussing in the presence of a press reporter,
24 please let me know at that time, and I will ask the press
25 reporter to step away.

Sidebar

206

1 Is there anyone who did not understand or who can
2 not accept any of the principles of law that I have thus far
3 explained to you? If so, please raise your hand.

4 Is there anyone who has heard anything about this
5 case before today?

6 All right. In cases who that received media
7 attention, it is not wrong to have heard or to have formulated
8 an opinion. The critical issue is whether your opinion will
9 interfere with your ability to be fair and impartial to both
10 sides and to decide this case based solely on the evidence and
11 instructions of law at this trial.

12 I will ask the jurors that if you have heard
13 something about this case and if you have formed an opinion
14 about the case, whether it will affect your ability to be fair
15 and impartial.

16 Let me start with hands up on the first row.

17 Juror No. 1, I'm going to ask you to come to
18 sidebar, over to my right.

19 In the meantime, please, the rest of you, thank you
20 for your ongoing patience.

21 (Sidebar; prospective juror joins.)

22 THE COURT: This is Juror No. 131. Hello.

23 THE PROSPECTIVE JUROR: Hi.

24 THE COURT: Can you tell us what you've heard?

25 THE PROSPECTIVE JUROR: A bunch of news articles

1 about the AIDS medication price jacking, is what I've heard.

2 THE COURT: The charges in this case do not
3 involve -- do not relate to the pricing of drugs.

4 THE PROSPECTIVE JUROR: Okay.

5 THE COURT: The question I have for you is whether
6 what you have heard will impair your ability to be fair and
7 impartial and open-minded to both sides in this case.

8 THE PROSPECTIVE JUROR: Probably. I think yes.

9 THE COURT: All right. At a trial, we ask the
10 jurors to decide the case based only on the evidence presented
11 and to keep a fair and impartial mind towards both sides, to
12 not decide anything until they are given the instructions and
13 asked to deliberate.

14 Could you maintain a fair and impartial mind to both
15 sides in this case and decide this case based only on the
16 evidence?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. You talked about "probably."
19 I just want to explore that further.

20 When you initially indicated some hesitation, could
21 you explain?

22 THE PROSPECTIVE JUROR: The news that I read about
23 him directly affects members of the community I'm in. So, he
24 was -- it made a very distinct impression when I read it and
25 it was a very distinct negative impression.

Sidebar

208

1 THE COURT: Well, the question I have for you,
2 though, is given that the charges do not involve the pricing
3 of pharmaceuticals, is there anything else that you've read
4 about Mr. Shkreli that would make it difficult for you to be
5 fair to both sides in this case and to keep an open mind
6 about --

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: All right. Let me just ask you one
9 other question. Do you believe that you could evaluate this
10 case based on the evidence only at this trial?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: And would you apply my instructions on
13 the law as directed at the end of the case?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. Thank you. Let me ask you
16 to just step over to the side, in that chair, just for a brief
17 moment.

18 (Prospective juror leaves sidebar.)

19 MR. AGNIFILO: I think the problem is if Mr. Shkreli
20 testifies, the Government indicated that he will go into
21 exactly the issue that she said she was personally concerned
22 about. So, I don't know that that's outside the four corners
23 of the case.

24 THE COURT: What I told her, though, is that he's
25 not charged with these offenses, given the caveat that the

1 Government has clarified that they may go into it on cross.

2 MR. BRAFMAN: Judge, you did a very good job,
3 respectfully, of rehabilitating the juror, but I think the
4 reality is that before you asked those questions, she
5 indicated a clear negative bias, said that he had impacted on
6 specifically her community. The Daraprim issue is an HIV drug
7 affecting the gay and lesbian community.

8 And I think she has tried her best to convey to you
9 that she doesn't start out this case as presuming him to be
10 innocent, she starts out basically having very negative
11 feelings about him. I just think she should be challenged for
12 cause and I think they should consent to it.

13 This is a clear bias that was demonstrated, even
14 though she I think answered you at the end that she would try
15 to be fair. This is a juror who is, I think, adversely
16 affected directly by allegations that may have nothing to do
17 with this case but are all around this case.

18 THE COURT: I'll hear from the Government.

19 My only point is that there's likelihood that a
20 juror has heard something about this case, among those who are
21 being called in this, and the question we must ask is whether
22 that information will impair their ability to be fully fair to
23 both sides.

24 MR. BRAFMAN: I understand. But this isn't simply
25 "I heard about the case," this is "I know about the charges,

1 it impacts my community, it created a negative bias on my
2 part." I think this is a consent challenge.

3 THE COURT: Any objection?

4 MS. KASULIS: Your Honor, we do. As Mr. Brafman
5 said, you made follow-up inquiries of her if she could be fair
6 and impartial. She says she can. She seems to be someone who
7 reflects on her feelings and was able to process the issues.

8 In terms of the Daraprim piece, we only intend to go
9 into that on cross if he opens the door to it on direct
10 examination, so it's not necessarily an issue in the case.

11 THE COURT: Perhaps I should flesh out whether if
12 she does hear evidence about drugs that are being used to
13 treat certain diseases and the pricing, whether that would
14 affect her ability at that point to be fair and impartial.

15 MR. AGNIFILO: Your Honor, I think it's also
16 relevant how she would view his credibility in general; not
17 just if it's charged or not, but if he testifies would she
18 view him with true objective credibility?

19 So, it's not just in regard to the charges, it's
20 generally in regard to the Defendant and him getting a fair
21 shake in the eyes of all the jurors.

22 MR. BRAFMAN: Judge, we haven't really had the need
23 to flesh out bias extensively; on any other juror, it has
24 basically been consent. This is a juror who, as soon as she
25 sat down, basically confided in your Honor and all of us that

1 she knows about him, she is bias in a negative way. Forget
2 the presumption of innocence, she hates him before she hears
3 an opening statement.

4 And I think at the end of the day, this is not an
5 appropriate juror in a case where others have described him in
6 negative terms and everyone has consented. This is a juror
7 who seems to have been personally affected by the fact that he
8 is accused in the media of hurting, as she identified, her
9 community. I'm not suggesting that a gay person could not
10 serve as a juror, but there is an issue as to whether or not
11 there's a heightened sensitivity to someone who describes him
12 as some one who has been accused of jacking up the prices of
13 drugs that impact on her community. I just don't know how --

14 THE COURT: We haven't identified her community,
15 just for the record.

16 MR. BRAFMAN: I understand that. But she used those
17 terms, and the community which Mr. Shkreli before Congress was
18 alleged to have impacted was the gay and lesbian community.
19 She said it was her community. I'm not making a judgment
20 call.

21 THE COURT: All right. This drug is also used for
22 women who may be pregnant. It's not just the gay community.

23 MR. BRAFMAN: That was not the input of the
24 Congressional hearings that were widely televised.

25 THE COURT: I'm just trying to probe her meaning of

Sidebar

212

1 "community," not assuming what her community is at this point.
2 We can explore further.

3 (Prospective juror joins sidebar.)

4 THE COURT: Ma'am, it is possible that -- as I told
5 you, there's no obligation of any defendant to testify. They
6 have a right not to do so and you can't hold that against a
7 defendant, when they don't testify.

8 But if he did testify, would you have difficulty
9 carefully evaluating and weighing the credibility of his
10 testimony?

11 It's important for you to just be very honest.

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: You would.

14 THE PROSPECTIVE JUROR: Yeah.

15 THE COURT: Then what I will do is excuse you and
16 ask you to go to the jury room and tell them you've been
17 excused. Thank you for your candor.

18 THE PROSPECTIVE JUROR: Okay.

19 (Prospective juror excused.)

20 THE COURT: That was a for cause challenge that was
21 granted.

22

23 (Continued on next page.)

24

25

LAM

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RPR

1 (In open court.)

2 THE COURT: Which of the jurors in the first row had
3 their hand up? Put your hands up in the first row. This is
4 if you have heard anything about the case that would affect
5 your ability to be fair and impartial.

6 Juror No. 132, come on up, please, ma'am.

7 (Prospective juror present at sidebar.)

8 MR. BRAFMAN: What number?

9 THE COURT: Juror No. 132 in seat two.

10 (Prospective juror present at sidebar.)

11 THE COURT: What have you heard about the case and
12 how has it affected you?

13 THE PROSPECTIVE JUROR: I heard something because
14 something I can't understand, I have like English problem.

15 THE COURT: You have difficulty with the language?

16 THE PROSPECTIVE JUROR: Yes. That's right.

17 THE COURT: How long have you been in this country?

18 THE PROSPECTIVE JUROR: 16 years.

19 THE COURT: 16?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: What do you do for a job?

22 THE PROSPECTIVE JUROR: Preschool teacher.

23 THE COURT: What language do you teach in?

24 THE PROSPECTIVE JUROR: In English. I take care of
25 infant babies.

1 THE COURT: You care for infants?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: I see. Do you speak to your fellow
4 teachers in English?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Have you studied in English?

7 THE PROSPECTIVE JUROR: Like my second language,
8 yeah.

9 THE COURT: That's great that you speak a second
10 language, but have you studied English?

11 THE PROSPECTIVE JUROR: Yes, I studied but I don't
12 know much.

13 THE COURT: Let me ask you to step away for one
14 moment?

15 THE PROSPECTIVE JUROR: I can understand, but talk
16 fast, I can't.

17 THE COURT: Can you understand, for example, when
18 you hear someone speaking? Did you understand what I said to
19 you this afternoon?

20 THE PROSPECTIVE JUROR: Yes. Yes.

21 THE COURT: Do you ever go to lectures where
22 somebody is speaking about a subject or do you watch lectures
23 online in English speaking about a subject?

24 THE PROSPECTIVE JUROR: Not much.

25 THE COURT: No?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Do you watch American television?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: What shows do you watch?

5 THE PROSPECTIVE JUROR: I watch news.

6 THE COURT: News?

7 THE PROSPECTIVE JUROR: Yes. News and some movie.

8 THE COURT: Do you have any difficulty understanding
9 news in English?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: Or movies?

12 THE PROSPECTIVE JUROR: No. My grammar mistakes.

13 THE COURT: Well, this is not grammar. Good grammar
14 is not a requirement of the job. What is important is that
15 you can understand what the witnesses are saying, what the
16 lawyers are saying and what the documents say. Do you foresee
17 any difficulty doing that?

18 THE PROSPECTIVE JUROR: I think difficult.

19 THE COURT: You would what?

20 THE PROSPECTIVE JUROR: Difficult.

21 THE COURT: Difficulty. Step away for just a
22 moment, please.

23 (Prospective juror leaves sidebar.)

24 THE COURT: Okay. I think she's probably fine. She
25 teaches kids. Does anyone object?

1 MR. BRAFMAN: I don't want to be the bad person. I
2 think you should excuse her for cause. She's obviously
3 concerned about her ability to understand. This is hard
4 enough to explain in perfect English.

5 THE COURT: All right. I think she is trying. I
6 think she is sincere. I will excuse Juror No. 132 in seat
7 two.

8 (Prospective juror present at sidebar.)

9 THE COURT: Ma'am, you could go to the jury room and
10 tell them that you are excused. They will give you some
11 paper.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Who else in the first row had their hand
15 up? Did you have your hand up?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: Then please maintain your seats. Seat
18 five had her hand up. Seat five, Juror No. 135.

19 (Prospective juror present at sidebar.)

20 THE COURT: Hello. No. 135. Nice to see you. What
21 would you like to tell us about?

22 THE PROSPECTIVE JUROR: I have heard the case on the
23 news and on TMZ.

24 THE COURT: The question is there has been media
25 coverage and oftentimes when we hear a story in the news it is

1 natural, as thinking human beings, to have an opinion about
2 what we have heard. But the question for you is, we examine
3 your qualifications to be a juror, whether or not you could
4 decide this case without bias or prejudice toward any party
5 and keep an open mind, a fair state of mind toward both
6 parties and decide this case based only on the evidence
7 presented at the trial in the courtroom. Could you do that?

8 THE PROSPECTIVE JUROR: I don't think I would be
9 able to do that.

10 THE COURT: You do or don't?

11 THE PROSPECTIVE JUROR: Don't.

12 THE COURT: Why is that, ma'am?

13 THE PROSPECTIVE JUROR: Well, when I first heard the
14 case, like I already -- I wouldn't be in favor of the
15 defendant. I'd part with the Government.

16 THE COURT: When you say you would part with the
17 Government, what do you mean?

18 THE PROSPECTIVE JUROR: Like I wouldn't choose the
19 defendant's side. I already made my decision.

20 THE COURT: You made up your mind?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Well, I will excuse you then and ask you
23 to go back to the jury room and tell them that you have been
24 excused from this panel.

25 THE PROSPECTIVE JUROR: I tell the people in the

1 front.

2 THE COURT: Yes, where you checked in today that you
3 have been excused from this panel?

4 THE PROSPECTIVE JUROR: Thank you very much.

5 (Prospective juror excused.)

6 (In open court.)

7 THE COURT: Who else in the front row, please?

8 Juror No. 139, correct?

9 THE PROSPECTIVE JUROR: Correct.

10 THE COURT: Come on up.

11 (Prospective juror present at sidebar.)

12 THE COURT: Hi, Juror No. 129, what have you heard?

13 THE PROSPECTIVE JUROR: I saw it all over TV. Part
14 of a Ponzi scheme, raise the price of drugs 80 percent. My
15 wife is at Winthrop, so she knows a little bit about it. The
16 whole thing with the Ponzi thing. I'm in the union. We lost
17 a lot of money for the unions. So there is no way I can give
18 you a fair opinion.

19 THE COURT: All right. So that would cloud your
20 ability to be fair?

21 THE PROSPECTIVE JUROR: Oh, yes. Yes.

22 THE COURT: I will excuse you then, sir.

23 THE PROSPECTIVE JUROR: All right.

24 THE COURT: Go back to the jury room, if you don't
25 mind, and tell them that you are excused.

1 THE PROSPECTIVE JUROR: Thank you.

2 (Prospective juror excused.)

3 (In open court.)

4 THE COURT: Juror No. 140, you had your hand up.

5 Come on up.

6 (Prospective juror present at sidebar.)

7 THE COURT: You are Juror No. 140.

8 THE PROSPECTIVE JUROR: Hi. Yes.

9 THE COURT: Please tell us what you have heard.

10 THE PROSPECTIVE JUROR: I know he has had a lot of
11 involvement with drugs, the prices of them, and personally I
12 find it truly disgusting. Also, because my uncle has aids, so
13 I don't believe I can be impartial and he's currently on
14 lifesaving medications for that.

15 THE COURT: Okay. What we will do then is we will
16 excuse you. Go back to the jury room and tell them that you
17 have been excused.

18 THE PROSPECTIVE JUROR: Thank you very much.

19 (Prospective juror excused.)

20 (In open court.)

21 THE COURT: Row two, who had a hand up as having
22 heard something about this case?

23 You are Juror No. 143 in seat No. 13. Come forward,
24 please. 144, excuse me.

25 (Prospective juror present at sidebar.)

1 THE COURT: Have a seat here. Juror No. 144. Tell
2 us what you have heard.

3 THE PROSPECTIVE JUROR: I've heard through the news
4 that -- I heard through the news of how the defendant changed
5 the price of a pill by up selling it. I heard he bought an
6 album from the Wu-Tang Clan for a million dollars, or 2
7 million. I forgot what else.

8 THE COURT: The question for you is there has been
9 media coverage and in the news you have probably heard
10 something about this gentleman. The question is have you
11 heard anything that would affect your ability to be fair to
12 both sides, to decide this case with an open mind, a sense of
13 fairness to both sides and consider the evidence, and
14 ultimately decide the case based only on the evidence
15 presented at the trial, not on anything you heard in the news?
16 Can you do that?

17 THE PROSPECTIVE JUROR: I don't think I can because
18 he kind of looks like a dick.

19 MR. BRAFMAN: A who?

20 THE COURT: You wanted him to say it again?

21 MR. BRAFMAN: No. I heard it. I heard it.

22 THE COURT: You are Juror No. 144 and we will excuse
23 you. Please go to the jury room and tell them.

24 (Prospective juror excused.)

25 THE COURT: Who else in the second row?

1 (In open court.)

2 THE COURT: Juror No. 151.

3 (Prospective juror present at sidebar.)

4 THE COURT: Yes, sir.

5 THE PROSPECTIVE JUROR: I just read the name in the
6 newspaper, he committed fraud in the healthcare industry. I
7 work in the healthcare industry for many years.

8 THE COURT: For many years you worked in Healthcare?

9 THE PROSPECTIVE JUROR: And I still do.

10 THE COURT: The question is: There has been media
11 attention. Many of us have heard something about the
12 gentleman who is the defendant and the question is whether you
13 could, as a juror, keep an open mind and a fair mind to both
14 sides?

15 THE PROSPECTIVE JUROR: I don't believe so.

16 THE COURT: You have made up your mind?

17 THE PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: I will ask you to go to the jury room.
19 I am going to excuse Juror No. 151. Thank you.

20 THE PROSPECTIVE JUROR: Thank you very much.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Is there anyone else in the third row?
24 Your number, sir?

25 THE PROSPECTIVE JUROR: 155.

1 THE COURT: Come forward. Juror No. 155.

2 (Prospective juror present at sidebar.)

3 THE COURT: You are Juror No. 155?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, sir. What would you like to
6 tell us about what you have heard?

7 THE PROSPECTIVE JUROR: Just -- I have read a lot of
8 articles about the case. I have seen a lot of news about the
9 case, about the prices being gouged and the supposed fraud,
10 with the -- with the SEC frauds. I think he is as guilty as
11 they come.

12 THE COURT: All right.

13 THE PROSPECTIVE JUROR: And I can't be impartial.

14 THE COURT: Then I will excuse you from this case.
15 You will go back to the jury room and tell them you may be
16 available for something else.

17 THE PROSPECTIVE JUROR: Thank you very much.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Were there any other hands up in the
21 last row? Juror No. 159.

22 (Prospective juror present at sidebar.)

23 THE COURT: Hello. Juror No. 159?

24 THE PROSPECTIVE JUROR: Yes.

25 He is the person with the EpiPen?

1 THE COURT: I am discussing about what you have
2 heard and whether --

3 THE PROSPECTIVE JUROR: I am asking if I am correct
4 in that assumption, that he's the person who raised the price
5 in the EpiPen? I know it doesn't have to do with this case.

6 THE COURT: The pricing of pharmaceuticals is not
7 charged in this case. The EpiPen is not an issue in this
8 case. It may be some other pharmaceutical?

9 THE PROSPECTIVE JUROR: But he is the person that I
10 saw in the news who raised the pricing of the EpiPen 700
11 percent?

12 MR. BRAFMAN: No, he is not.

13 THE COURT: He is not the person who raised the
14 price of the EpiPen. There have been news reports about this
15 case. The question is -- let me just say that it is possible
16 that you may hear evidence regarding pharmaceutical pricing
17 but it is not charged in the indictment in this case.

18 THE PROSPECTIVE JUROR: I understand it is not
19 charged. I have friends who's children depend on the EpiPen
20 and I cannot be unbiased if this is.

21 MR. BRAFMAN: Can we be heard for a moment?

22 THE COURT: Yes.

23 MR. BRAFMAN: Outside the presence?

24 THE COURT: Can we ask you to step away.

25 (Prospective juror leaves sidebar.)

1 MR. BRAFMAN: While Mr. Shkreli had nothing to do
2 with raising the price of the EpiPen, he was interviewed about
3 the subject on many occasions and did give running commentary
4 on it, so I would ask to challenge for cause.

5 MS. SMITH: I think it is fine clarifying with
6 people if he raised the price of a different drug. I don't
7 have a problem with that clarification.

8 MS. KASULIS: I think it is fine to excuse.

9 THE COURT: Ma'am.

10 (Prospective juror present at sidebar.)

11 THE COURT: Ma'am, we will excuse you and ask you to
12 go to the jury room and tell them that you have been excused.
13 Thank you.

14 THE PROSPECTIVE JUROR: Thank you.

15 (Prospective juror excused.)

16 (In open court.)

17 THE COURT: Is there anyone else in the rows to my
18 left that had their hand up?

19 We will now go to the first row directly in front of
20 me, starting with Juror No. 161. Is there anyone who has
21 heard about this case?

22 That was Juror No. 161. That was seat No. 31.

23 (Prospective juror present at sidebar.)

24 THE COURT: Juror No. 161?

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: Nice to see you. What have you heard?

2 THE PROSPECTIVE JUROR: I did read about it in the
3 New York Times. I saw some of the interviews that he had on
4 TV, but I don't recall too much of the case from whenever it
5 was.

6 THE COURT: The question for you is, there has been
7 media coverage and it is certainly all right for people to
8 have opinions.

9 THE PROSPECTIVE JUROR: Sure.

10 THE COURT: But the question for you is if you are
11 selected as a juror is whether you could maintain a fair and
12 open state of mind towards both sides?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: And whether you can decide this case
15 fairly to both sides based solely on the evidence presented at
16 this trial and not based on anything that you might have
17 heard? Could you do that?

18 THE PROSPECTIVE JUROR: Yes, I could.

19 THE COURT: All right. Let me just -- is there any
20 issue with the six-week trial?

21 THE PROSPECTIVE JUROR: Potentially.

22 THE COURT: Can you tell us about that?

23 THE PROSPECTIVE JUROR: I am pretty busy at work
24 implementing a new project. It would be difficult if it was
25 continuous for six weeks.

1 THE COURT: It is continuous for six weeks.

2 THE PROSPECTIVE JUROR: I'm starting tomorrow
3 potentially and somebody on my team is going on maternity, so
4 it would be a little challenging in that respect.

5 THE COURT: Could your employer provide backup for
6 you in that six-week period?

7 THE PROSPECTIVE JUROR: Not really.

8 THE COURT: What is it that you do?

9 THE PROSPECTIVE JUROR: I work in human resources
10 for a manufacturer.

11 THE COURT: Okay. And there is no one else that can
12 fill in?

13 THE PROSPECTIVE JUROR: I am the leader of the
14 department. There's somebody who reports to me and I also
15 have a person on my team just getting up to speed.

16 THE COURT: Would you can able to consult with that
17 individual after you have finished your jury service for the
18 day?

19 THE PROSPECTIVE JUROR: I have been in contact with
20 my team, but I do have a lot of key meetings happening in the
21 next couple weeks because I am meeting with all of the key
22 leaders of my company.

23 THE COURT: I see. When are these meetings?

24 THE PROSPECTIVE JUROR: One is on Wednesday, one
25 Thursday, one is the following week, with each of the key

1 leaders of the company.

2 THE COURT: All right. Let me ask you to step away
3 for one moment.

4 (Prospective juror leaves sidebar.)

5 THE COURT: Any objection to excusing Juror No. 161?

6 MR. BRAFMAN: No, Your Honor.

7 MS. KASULIS: No, Your Honor.

8 (Prospective juror present at sidebar.)

9 THE COURT: Sir, we will excuse you. You can go
10 back to the jury room and tell them that you are excused.
11 Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Is there anyone else?

15 Juror No. 162. Please come forward.

16 (Prospective juror present at sidebar.)

17 THE COURT: Hi, ma'am, have a seat.

18 THE PROSPECTIVE JUROR: Hi. Hi. I recognize the
19 defendant from the news and the media who raised the price of
20 a prescription drug to an unconscionable amount and I feel
21 that I cannot be impartial towards him after reading the news
22 stories.

23 THE COURT: All right. The charges in this case do
24 not concern the increase of the drug prices. It may come in
25 but not likely. I just wanted to --

1 THE PROSPECTIVE JUROR: Point that out.

2 THE COURT: Point that out.

3 THE PROSPECTIVE JUROR: I do feel his actions, what
4 I have read about the drugs, have made me consider that he
5 could potentially already do the charges.

6 THE COURT: Thank you for your candor. I will
7 excuse you and ask you to go to the jury room. You are being
8 excused.

9 THE PROSPECTIVE JUROR: Okay.

10 THE COURT: Juror No. 162 is excused without
11 objection?

12 MR. BRAFMAN: Yes.

13 MS. KASULIS: Yes.

14 (Prospective juror excused.)

15 (In open court.)

16 THE COURT: Anyone else in the first row? Juror No.
17 164, please come forward.

18 (Prospective juror present at sidebar.)

19 THE COURT: Hello, sir. Juror No. 164. What have
20 you heard?

21 THE PROSPECTIVE JUROR: I mean, I remember reading
22 about the case, you know, a little while back. Just, you
23 know, Mr. Shkreli has committed some kind of fraud. I don't
24 remember any specifics.

25 THE COURT: All right. Well, I think there has been

1 media coverage and it is natural to have heard --

2 THE PROSPECTIVE JUROR: Right.

3 THE COURT: -- if you watch the news.

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: The question is what you have heard,
6 whether it will impair your ability to be fair and impartial
7 to both sides and keep an open mind as you listen to the
8 evidence, can you do that?

9 THE PROSPECTIVE JUROR: I don't know that I could,
10 you know, I can't, based on what I have heard so far. Maybe
11 once I heard more evidence, I would be able to lean towards
12 one side.

13 THE COURT: Well, what you heard on the media is not
14 going to be something that a juror should consider.

15 THE PROSPECTIVE JUROR: Right.

16 THE COURT: The question is whether you can put that
17 out of your mind and commit to deciding this case with a fair
18 state of mind to both sides and to decide the case based
19 solely on the evidence in the trial. Can you do that?

20 THE PROSPECTIVE JUROR: I would not be confident. I
21 can't say for sure.

22 THE COURT: All right. Can you explain about why
23 you feel that way?

24 THE PROSPECTIVE JUROR: Well, you know, just that
25 since I've never been in a situation like this, I can't tell

1 you what I'm going to be able to do.

2 THE COURT: Well, jury service is something we are
3 all called upon to do. Maybe it is a disruption of your
4 personal life.

5 THE PROSPECTIVE JUROR: No, that's not what I'm
6 saying.

7 THE COURT: It is a difficult thing to sit
8 attentively and listen carefully. You must remain impartial
9 and not judge anything until after you have heard all of the
10 evidence and I have given the instructions and then I would
11 ask you and the fellow jurors and together you would reach a
12 verdict. Now, could you do that?

13 THE PROSPECTIVE JUROR: I probably could do that.

14 THE COURT: Earlier, when you said you might have
15 some difficulty doing this, is that because you have never sat
16 on a jury before?

17 THE PROSPECTIVE JUROR: It is because I don't
18 remember what I heard in the news. It means if I heard, I
19 will remember, it will jog my memory, and I will remember the
20 opinion which I had formed then at the time that I read those
21 reports.

22 THE COURT: Well, I described to you what the
23 charges are. All right. I don't know whether what you have
24 heard today about the charges jogs your memory at all about
25 what you may have heard in the news. You might have heard

1 other things in the news.

2 THE PROSPECTIVE JUROR: If that's -- probably I'll
3 be okay.

4 THE COURT: All right. Now, when you say I'll
5 probably be okay, can you commit to the best of your ability
6 to be open-minded and fair to both sides?

7 THE PROSPECTIVE JUROR: To the best of my ability, I
8 can commit to be open-minded.

9 THE COURT: Would you decide this case not based on
10 what you have heard or what you remember from hearing on the
11 news, but rather on the evidence that is presented at this
12 trial in this case?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you. Let me ask you to step away
15 just for a moment, just over there. All right.

16 (Prospective juror leaves sidebar.)

17 THE COURT: All right. Does anybody have any
18 further questions for this witness?

19 MR. BRAFMAN: I will pass this one to them. Your
20 Honor, I think we have met the cut if you have heard about the
21 case that doesn't excuse you from being on the jury. He
22 doesn't even remember what he heard. So I give him the
23 benefit of the doubt that he can try and be fair.

24 THE COURT: All right. Good.

25 MS. KASULIS: Yes.

1 THE COURT: We will ask him to resume his seat.

2 (Prospective juror present at sidebar.)

3 THE COURT: I am going to ask you to return to seat
4 No. 34, please.

5 THE PROSPECTIVE JUROR: Sure. Thank you.

6 (Prospective juror leaves sidebar.)

7 THE COURT: Thank you.

8 (In open court.)

9 THE COURT: Is there anyone else in the row directly
10 in front of me who had their hand up regarding media reports
11 that they have heard? All right. Thank you.

12 I am going to ask about the six-week trial and ask
13 about hardships.

14 As I told you, the trial is scheduled to begin
15 tomorrow and last approximately four to six weeks. I ask if
16 anyone would find it extremely burdensome to serve on this
17 jury. I recognize jury service may be extremely inconvenient
18 for some, maybe all of you, but you have to ask yourself
19 whether serving on this jury would be so much more
20 inconvenient or burdensome to you than for anyone else.

21 You should also ask yourself what attitude you would
22 want jurors to have if you or someone very close to you that
23 you cared about deeply were to be tried by a jury. The right
24 to a trial by jury is a fundamental constitutional right and
25 you should bear in mind that the sacrifices were made by many

1 people throughout your country's history to preserve and
2 protect the right to a jury trial in our constitution.

3 Is there anyone who would have extreme burden or
4 hardship in serving?

5 All right. In the first row, we have a juror in
6 seat No. 3. Why don't you come to sidebar, sir.

7 (Prospective juror present at sidebar.)

8 THE COURT: Have a seat, sir. Juror No. -- are you
9 Juror No. 134?

10 THE PROSPECTIVE JUROR: 133.

11 THE COURT: Okay, Juror No. 133. Okay, sir. Yes,
12 sir, tell us what your situation is regarding serving for six
13 weeks.

14 THE PROSPECTIVE JUROR: Because if I don't work one
15 week, I will be broke and bankrupt. I can't stay for six
16 weeks. I pay mortgage, I pay everything.

17 THE COURT: What do you do, sir?

18 THE PROSPECTIVE JUROR: Hum?

19 THE COURT: What do you do for a living?

20 THE PROSPECTIVE JUROR: I'm ambulance driver.

21 THE COURT: You are a driver?

22 THE PROSPECTIVE JUROR: Yes, ambulance.

23 THE COURT: Of an ambulance?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Do you get paid while you are on jury

1 duty?

2 THE PROSPECTIVE JUROR: No, only \$40, but usually my
3 paycheck a thousand every week.

4 THE COURT: Every week. Do you know if your
5 employer has a policy about paying employees on jury duty?

6 THE PROSPECTIVE JUROR: But my boss doesn't pay for
7 -- I work for 15 years in this company. He never pay.

8 THE COURT: Okay. All right.

9 THE PROSPECTIVE JUROR: And the last time I stay in
10 City Court two weeks and do not pay me.

11 THE COURT: This is federal court and the question I
12 have for you is whether you would be paid by your employer and
13 you are telling me no, is that correct?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: I will excuse you. You are Juror No.
16 133, correct?

17 THE PROSPECTIVE JUROR: Uh-hum.

18 THE COURT: You are excused. You can tell the jury
19 clerk where you checked in that you are excused. Thank you.

20 THE PROSPECTIVE JUROR: Thank you, guys.

21 (Prospective juror excused.)

22 THE COURT: I feel like I may be made a mistake
23 because I just excused this gentleman but I had him crossed
24 off my list for cause.

25 MS. KASULIS: 135 was excused.

1 THE COURT: He was excused for cause. We have
2 excused 133 on the consent of the parties?

3 MR. BRAFMAN: Yes.

4 MS. KASULIS: Yes.

5 MS. SMITH: Yes.

6 (In open court.)

7 THE COURT: Who else had their hand up in the first
8 row? You are Juror No. 136?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Come on up, ma'am.

11 (Prospective juror present at sidebar.)

12 THE COURT: Have a seat?

13 THE PROSPECTIVE JUROR: Hi.

14 THE COURT: How are you?

15 THE PROSPECTIVE JUROR: Good. I am a practicing
16 attorney. I'm in-house counsel at a non-profit contracted
17 with the city to provide guardianship services to clients that
18 have been deemed incapacitated by New York State Supreme Court
19 around the five boroughs. I handle all the landlord/tenant
20 litigation. I'm the only attorney there who has
21 landlord/tenant experience. There are approximately 700 cases
22 that my client has. They would not be able to replace me for
23 six weeks and it would be extremely difficult for my client if
24 I was absent for that amount of time. I would just ask to be
25 relieved from here.

1 THE COURT: Let me ask you to step away.

2 (Prospective juror leaves sidebar.)

3 THE COURT: Is there any objection to excusing Juror
4 No. 136?

5 MR. BRAFMAN: No, Your Honor.

6 MS. KASULIS: No.

7 THE COURT: Thank you.

8 (Prospective juror present at sidebar.)

9 THE COURT: We are going to excuse you and ask you
10 to go to the jury room and tell them that you have been
11 excused. Juror No. 136 is excused.

12 (Prospective juror excused.)

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Side Bar

237

1 (In open court.)

2 THE COURT: Who else in the front row had their hand
3 up? No one else?

4 Second row, the last juror. Thank you. You are
5 Juror Number 150? Come forward, please.

6 (Side bar continues; prospective juror joins.)

7 THE COURT: Come on up, sir. Number 150?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. What is the situation, sir?

10 THE PROSPECTIVE JUROR: The situation is that --
11 it's my first time here, right?

12 THE COURT: Yes.

13 THE PROSPECTIVE JUROR: So, the thing is, like, I
14 working, I work five days a week.

15 THE COURT: Okay. What do you do?

16 THE PROSPECTIVE JUROR: I work as a waiter.

17 THE COURT: A waiter? Okay.

18 THE PROSPECTIVE JUROR: So, I have to be on the job
19 so I'm in charge of the one place.

20 THE COURT: What are your hours, your work hours?

21 THE PROSPECTIVE JUROR: Work hours? I start at --
22 sometimes I start at 9, 10 o'clock to 12.

23 THE COURT: Ten a.m. to 12 a.m.?

24 THE PROSPECTIVE JUROR: But there's no schedule
25 every day so every day, change the schedule.

CMH

OCR

RMR

CRR

FCRR

Side Bar

238

1 THE COURT: I see.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: And would your employer allow you to be
4 paid while you were on jury duty?

5 THE PROSPECTIVE JUROR: I don't know.

6 THE COURT: Okay. All right. Does your employer
7 have enough other individuals who can fill in for you while
8 you are on jury duty?

9 THE PROSPECTIVE JUROR: I think so, he can make it.

10 THE COURT: Okay. But the question I have for you
11 is do you know what his or her policy is regarding payment of
12 employees who serve on jury duty?

13 THE PROSPECTIVE JUROR: See, he paid me in check.

14 THE COURT: Yes, but does he pay you if you were on
15 jury duty and not at the place of work?

16 THE PROSPECTIVE JUROR: Let's see. I don't know
17 what to tell you.

18 THE COURT: You don't know?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: All right. Would you step away just for
21 a moment?

22 THE PROSPECTIVE JUROR: Sure.

23 (Prospective juror leaves side bar.)

24 THE COURT: Okay. Juror Number 150 does not seem to
25 be certain as to whether he will be paid if he's on jury duty.

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Side Bar

239

1 MR. BRAFMAN: I don't think anyplace pays waiters
2 when they serve six weeks jury duty, plus they lose out on
3 tips, so he's going to come back tomorrow and say he needs to
4 be excused.

5 MS. KASULIS: Yes, I think.

6 THE COURT: So we'll excuse Juror 150 then?

7 MS. KASULIS: We'll consent.

8 MR. BRAFMAN: Yes.

9 (Prospective juror joins side bar.)

10 THE COURT: Sir?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: We are going to excuse you.

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: So, you are excused. So you can go back
15 to the jury room and tell them you are excused. All right?

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: You can get your papers and be able to
18 get to work.

19 THE PROSPECTIVE JUROR: Thank you so much. So, I'm
20 finished?

21 THE COURT: Yes. Go back to the jury room and get
22 your paper.

23 (Prospective juror excused.)

24 (In open court.)

25 THE COURT: All right. I'm sorry. I might have

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Side Bar

240

1 missed it. You are in seat number 11, Juror Number 141.

2 (Side bar continues; prospective juror joins.)

3 THE COURT: Are you number 141, ma'am?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Is this you?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Yes, ma'am.

8 THE PROSPECTIVE JUROR: Well, there's a few things.

9 I have a doctor's appointment that is on the 10th so I don't
10 know if I would be able to move that. I don't know if court
11 is every day. And then I wasn't sure if these kinds of things
12 run over because I do have a family holiday planned at the end
13 of August.

14 THE COURT: We will not be on trial at the end of
15 the August because I have a family holiday planned much so,
16 they're going to finish within six weeks.

17 THE PROSPECTIVE JUROR: So then it would be the
18 doctor's appointment is my main concern.

19 THE COURT: Is that flexible? I don't want you to
20 ignore a situation if you need a checkup, but if it's flexible
21 and if it's not something that --

22 THE PROSPECTIVE JUROR: I wouldn't want to put it
23 off for four to six weeks.

24 THE COURT: Okay.

25 THE PROSPECTIVE JUROR: So that's the problem, but I

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Side Bar

241

1 didn't know, if you don't go to court every day, then I
2 probably could put it on, but it has to be during the week.

3 THE COURT: When is it, July 10th?

4 THE PROSPECTIVE JUROR: So, that's a Monday.

5 THE COURT: Monday. Yes. Unfortunately, we
6 probably sit on Monday. We try to sit every day.

7 THE PROSPECTIVE JUROR: Okay.

8 THE COURT: Flexible sometimes on Fridays and you
9 know July 3rd and 4th, we will be off. If your doctor could
10 see you on the 3rd, it wouldn't be an issue.

11 THE PROSPECTIVE JUROR: I wouldn't know without
12 calling them.

13 THE COURT: All right. Let me ask you to just step
14 back for a moment.

15 THE PROSPECTIVE JUROR: Sure.

16 (Prospective juror leaves side bar.)

17 THE COURT: I wouldn't want to lose this juror.
18 Obviously, if we could have her change her appointment, I
19 don't see any reason why she shouldn't sit, but I don't want
20 to impair her ability to seek medical attention.

21 MR. BRAFMAN: It's your call, Judge. If you want to
22 have her excused, that's fine. If you want to have her come
23 back tomorrow and see if she can rearrange it --

24 THE COURT: I might ask her to get her phone and use
25 the phone in the jury room and see if she can set up an

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Side Bar

242

1 appointment for July 3rd instead of the 10th. Escort her
2 there.

3 THE CLERK: Yes.

4 (Prospective juror joins side bar.)

5 THE COURT: Ma'am, we're going to ask you to go to
6 the jury room and call your doctor's office and see if you can
7 change your doctor's appointment on July 3rd when we're not
8 sitting or later on a Friday afternoon, I might allow you to
9 leave earlier.

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: Zoe will take you over there.

12 (Prospective juror leaves side bar.)

13 (In open court.)

14 THE COURT: Let's keep going. Was there anyone else
15 on the second row?

16 All right. Let's see. Juror seated in seat number
17 16 is Juror Number 146.

18 (Side bar continues; prospective juror joins.)

19 THE COURT: Hello, Juror Number 146.

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Have a seat. What can you tell us?

22 THE PROSPECTIVE JUROR: I have a vacation planned.
23 I don't know if that counts.

24 THE COURT: When is it?

25 THE PROSPECTIVE JUROR: I'm supposed to leave on the

Side Bar

243

1 16th and for six days.

2 THE COURT: 16th of July?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: It will be during the trial. So what
5 kind of vacation is it that you're planning?

6 THE PROSPECTIVE JUROR: I just -- I'm supposed to
7 just go to North Carolina and visit family.

8 THE COURT: Okay. Is there any flexibility in
9 changing your vacation until late August or is that set in
10 stone?

11 THE PROSPECTIVE JUROR: I mean, everything is kind
12 of already purchased and booked.

13 THE COURT: Okay. All right. So you're flying or
14 something?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: All right. Then I will excuse you,
17 ma'am.

18 THE PROSPECTIVE JUROR: Okay. Thank you.

19 THE COURT: Just go to the jury room and tell them
20 you have been excused from this panel. All right?

21 THE PROSPECTIVE JUROR: Okay. Thank you so much.

22 THE COURT: No objection.

23 MS. KASULIS: No objection.

24 MR. BRAFMAN: No objection.

25 (Prospective juror excused.)

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Side Bar

244

1 (In open court.)

2 THE COURT: Is there anyone else in the second row?
3 Juror Number 147.

4 (Side bar continues; prospective juror joins.)

5 THE COURT: Have a seat, Juror Number 1447. Hello.

6 THE PROSPECTIVE JUROR: Hi.

7 THE COURT: So, what is your issue?

8 THE PROSPECTIVE JUROR: I work for a public
9 accounting firm. The New York City pension systems is one of
10 our clients. The year end is 6/30 and they're the biggest
11 client of our firm so this is a crucial part, the timeline of
12 the client, as far as planning and that phase. So, I'm not
13 sure as far as whether it's six weeks or realistic for me or
14 not.

15 THE COURT: Well, the fiscal year ends June 30th.

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: So this Friday?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: And then what happens after that; is
20 there somebody else at your office who can fill in for you?

21 THE PROSPECTIVE JUROR: That's up to my, I guess,
22 bosses. I'm not 100 percent sure.

23 THE COURT: Do you know what your policy is
24 regarding paying jurors for jury service?

25 THE PROSPECTIVE JUROR: I do not, no.

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1 THE COURT: All right. If we were to make your
2 phone available, could you call your office and find out
3 whether a six week jury trial would result in any loss of pay
4 or --

5 THE PROSPECTIVE JUROR: I can, yes, but if I can
6 additionally add something to it.

7 THE COURT: Sure.

8 THE PROSPECTIVE JUROR: With my accounting
9 background and educational background, I think I might have a
10 biased opinion, kind of a zero tolerance to SEC fraud and
11 stuff like that, so I wouldn't be the best person to sit on
12 the jury.

13 THE COURT: Okay. So, are you telling us that given
14 your background, that you would not be able to set aside --

15 THE PROSPECTIVE JUROR: I personally wouldn't feel
16 comfortable going into that case with a biased opinion
17 already.

18 THE COURT: All right. So you feel that you already
19 have a bias against somebody who's merely accused of --

20 THE PROSPECTIVE JUROR: Within the industry and my
21 educational experience, it was just always kind of something I
22 don't want to be involved with and if you see something, hear
23 something, it's more like a say something policy.

24 THE COURT: All right. Well, then, let me ask you
25 to just step a way for one moment.

1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: Actually, I think I am going to excuse
3 you. All right, sir. Go to the jury room and tell them you
4 have been excused.

5 THE PROSPECTIVE JUROR: Okay.

6 THE COURT: This is Juror Number 147.

7 THE PROSPECTIVE JUROR: All right. Thank you.

8 THE COURT: Thank you.

9 I take it there is no objection to excusing him?

10 MS. KASULIS: No.

11 MR. BRAFMAN: No objection.

12 THE COURT: All right.

13 (Prospective juror excused.)

14 (In open court.)

15 THE COURT: Anyone else in the second row?

16 Juror Number 148, yes, ma'am, come forward, please.

17 (Side bar continues; prospective juror joins.)

18 THE COURT: Have a seat, ma'am. How are you?

19 All right. What is the nature of the hardship?

20 THE PROSPECTIVE JUROR: I just started a new job
21 about three weeks ago.

22 THE COURT: And do you know what your employer's
23 policy is regarding jury service?

24 THE PROSPECTIVE JUROR: They would allow you, but
25 the position that I have, I'm training during this first --

1 THE COURT: Oh, you are being trained?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. So, if that is the case,
4 would your employer be willing to let you serve and then
5 undergo training or was there a class of employees that are
6 going through the training?

7 THE PROSPECTIVE JUROR: I would have to find out.

8 THE COURT: Okay. May I ask you not where you work
9 but what kind of work you do?

10 THE PROSPECTIVE JUROR: A real estate professional.

11 THE COURT: Okay. And the training is in, is it
12 being a broker?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Is it real estate finance?

15 THE PROSPECTIVE JUROR: Real estate vendor
16 management.

17 THE COURT: Vendor management? All right. Are you
18 the only one being trained at the current time?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: And you started three weeks ago?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Are you familiar at all with your
23 employer's jury service policy?

24 THE PROSPECTIVE JUROR: I believe it should be fine
25 for me to serve.

Side Bar

248

1 THE COURT: You think it should or should not?

2 THE PROSPECTIVE JUROR: It should be.

3 THE COURT: Would you be paid?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. What I will ask you to do is
6 to try to find out if you could from your employer whether
7 there would be any issues with you serving in a six-week
8 trial.

9 THE PROSPECTIVE JUROR: Okay.

10 THE COURT: And whether your training could await
11 your service.

12 THE PROSPECTIVE JUROR: Okay.

13 THE COURT: Okay? If you need to retrieve your
14 phone to make that call, Ms. Jackson --

15 THE PROSPECTIVE JUROR: I didn't walk with my phone
16 today.

17 THE COURT: Oh, you don't have it? Do you have the
18 number of your employer?

19 THE PROSPECTIVE JUROR: In my phone.

20 THE COURT: All right. We can't make the call. Let
21 me ask you to step away, please, for just one moment.

22 (Prospective juror leaves side bar.)

23 THE COURT: We can't get this resolved today so I
24 might just have to excuse her unless somebody has a different
25 view.

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Side Bar

249

1 MS. SMITH: I mean, if we're calling other jurors
2 back tomorrow, she can find out tonight.

3 (Prospective juror joins side bar.)

4 THE COURT: All right. Ma'am, would you mind just
5 reaching out to your employer as soon as you can and hopefully
6 come back tomorrow with an answer regarding your service for
7 six weeks and whether you will be paid and whether your
8 training can be postponed until you return?

9 THE PROSPECTIVE JUROR: Okay. Do you want me --

10 THE COURT: Go back to your seat, number 18.

11 THE PROSPECTIVE JUROR: Okay.

12 (Prospective leaves side bar.)

13 (In open court.)

14 THE COURT: Are there any other hands up in the
15 second row? The third row, are there any hands up?

16 Okay. We have Juror Number 154. Come forward,
17 please, seat 24.

18 (Side bar continues; prospective juror joins.)

19 THE COURT: Are you Juror Number 154?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Your issues are?

22 THE PROSPECTIVE JUROR: First, my language. My
23 first language is not English. Second, I came here only from
24 eight years and I don't have full meaning for every rule
25 definition. My work is dealing with measure the street so I

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1 deal with only numbers.

2 THE COURT: You measure the streets?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: What is your native language, sir?

5 THE PROSPECTIVE JUROR: Arabic.

6 THE COURT: Okay. How long have you been in this
7 country?

8 THE PROSPECTIVE JUROR: Eight years.

9 THE COURT: Eighteen?

10 THE PROSPECTIVE JUROR: Eight.

11 THE COURT: Have you studied English?

12 THE PROSPECTIVE JUROR: I studied here in America
13 for eight years.

14 THE COURT: Do you use English in your daily job?

15 THE PROSPECTIVE JUROR: I use number. More number
16 than words.

17 THE COURT: All right. Do you have any difficulty
18 understanding spoken English?

19 THE PROSPECTIVE JUROR: I have difficulty for
20 language, is the word used in that chart, something like this.
21 I deal with numbers and maps mostly, more than word.

22 THE COURT: I think there will be a fair amount of
23 numbers in this case, but there will also be witnesses who
24 will testify and other --

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: -- evidence which it is important that
2 you understand --

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: -- the lawyers, me and others. Can you
5 do that?

6 THE PROSPECTIVE JUROR: When you said here in the
7 beginning, you said test of 1 to 5 and 5, I don't clarify what
8 you mean by this word. When you said from 1 to 5, from 6 to,
9 about the charge. Charge?

10 THE COURT: Oh, I was just trying to get you in your
11 seats.

12 MR. BRAFMAN: No, when you read the charges in the
13 case.

14 THE COURT: Okay. Those are what are called the
15 counts of the indictment.

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: You did not understand what I said?

18 THE PROSPECTIVE JUROR: I did not, yes.

19 THE COURT: All right. Then I am going to excuse
20 you, sir. All right? So just go to the jury room when you
21 checked in and tell them you have been excused.

22 We will excuse Juror Number 154 without objection.

23 MS. KASULIS: No objection.

24 MR. BRAFMAN: No objection.

25 THE PROSPECTIVE JUROR: I'm sorry.

Side Bar

252

1 THE COURT: That's all right.

2 (Prospective juror excused.)

3 (In open court.)

4 THE COURT: Is there anyone else -- just one moment.

5 (Side bar continues.)

6 THE COURT: Juror Number 141's doctor could not
7 reschedule the appointment. She's back in her seat. So I
8 believe she probably needs to be excused, given her medical
9 examination.

10 MR. BRAFMAN: That's fine, Judge.

11 (In open court.)

12 THE COURT: Will Juror Number 141 please come over
13 here to side bar?

14 (Side bar continues; prospective juror joins.)

15 THE COURT: Hi, ma'am. We are going to excuse you.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: So just go to the jury room and tell
18 them you are excused.

19 THE PROSPECTIVE JUROR: Okay. Thank you.

20 THE COURT: Thank you.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: All right. We had other hands up?

24 THE PROSPECTIVE JUROR: Sorry, Your Honor, I just
25 thought of something.

Side Bar

253

1 THE COURT: You just thought of something? Well,
2 why don't we hear from you then. You are Juror Number 134, is
3 that right?

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: All right. Come on up.

6 (Side bar continues; prospective juror joins.)

7 THE COURT: Hello. Have a seat.

8 THE PROSPECTIVE JUROR: Two things real quick.
9 First, just, everyone is looking at me and I work -- I'm a
10 contractor. I work for the Army and it's, if it's going to be
11 a long trial --

12 THE COURT: Six weeks.

13 THE PROSPECTIVE JUROR: -- that would be burdensome
14 for work. I'm part of a small team. The other thing is I
15 didn't really catch your pronunciation of the gentleman's name
16 earlier. I only just made the association with some of the
17 media attention.

18 THE COURT: All right. Well, the question is we
19 have two issues. One is your job. So, I am going to ask you
20 that first. You said it is a small team?

21 THE PROSPECTIVE JUROR: Small team.

22 THE COURT: Do you work for the Government?

23 THE PROSPECTIVE JUROR: I work for the Army.

24 THE COURT: And you're paid for your jury service?

25 THE PROSPECTIVE JUROR: Yes.

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1 THE COURT: All right. And is it possible that
2 there are other individuals at your employment who could fill
3 in for you while you were on jury duty for six weeks?

4 THE PROSPECTIVE JUROR: In this particular instance,
5 no. The team -- I do the hardware end of the things. We have
6 the programmers, but I'm the only person that handles the
7 hardware.

8 THE COURT: There's no other person?

9 THE PROSPECTIVE JUROR: No. No.

10 THE COURT: All right. No one else in the entire,
11 not in the entire army, but in your --

12 THE PROSPECTIVE JUROR: Like I said, we're a
13 contractor. I don't work directly for the Army. I work -- my
14 company works for them. It's a small contractor.

15 THE COURT: I see. So you are a private contractor?

16 THE PROSPECTIVE JUROR: Yes, sir -- I mean, yes,
17 ma'am.

18 THE COURT: So what I will do is excuse you. All
19 right. Just please go to the jury room and tell them that you
20 are excused from this panel.

21 THE PROSPECTIVE JUROR: Thank you very much.

22 THE COURT: All right. Any objections?

23 MR. BRAFMAN: No objection.

24 MS. KASULIS: No objection.

25 (Prospective juror excused.)

Side Bar

255

1 (In open court.)

2 THE COURT: Anyone else with their hands up?

3 Okay. We are in the third row at Juror 26. All
4 right. Come forward, 156. I'm sorry. Seat 26, Juror
5 Number 156.

6 (Side bar continues; prospective juror joins.)

7 THE COURT: Hello, ma'am, Juror Number 156. Hello.
8 Have a seat.

9 All right. Why don't you tell us about your issues?

10 THE PROSPECTIVE JUROR: Yes. I have a son with a
11 physical disability and he's going to do surgery on Friday.

12 THE COURT: All right. I will excuse you under
13 those circumstances and I wish you well.

14 THE PROSPECTIVE JUROR: Thank you very much.

15 THE COURT: Ma'am, thank you.

16 Juror Number 156 is excused without objection.

17 MS. KASULIS: No objection.

18 MR. BRAFMAN: Yes.

19 (Prospective juror excused.)

20 (In open court.)

21 THE COURT: Do we have someone else in the third
22 row?

23 Juror Number 158, please come forward.

24 (Side bar continues; prospective juror joins.)

25 THE COURT: Have a seat. You are Juror Number 158?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. Could you tell us your
3 conflicts, please?

4 THE PROSPECTIVE JUROR: I am second in command at a
5 small business and my boss is out of the country for the next
6 two and a half weeks.

7 THE COURT: I see. And are you the person in
8 charge?

9 THE PROSPECTIVE JUROR: I should be, yes.

10 THE COURT: All right. And there is no one else
11 there who can exercise supervisory authority?

12 THE PROSPECTIVE JUROR: Not the same way, no.

13 THE COURT: All right. Is there someone who is at
14 your level in the company?

15 THE PROSPECTIVE JUROR: There is one colleague, but
16 she can't partake in the meetings that I have scheduled for
17 the next few weeks because she hasn't been involved in those
18 projects.

19 THE COURT: I see. And is there any way to postpone
20 those meetings?

21 THE PROSPECTIVE JUROR: I don't think so, no.

22 THE COURT: Are they with clients?

23 THE PROSPECTIVE JUROR: Yes, clients.

24 THE COURT: All right. Let me ask you to just step
25 back for a moment.

Side Bar

257

1 THE PROSPECTIVE JUROR: Sure.

2 (Prospective juror leaves side bar.)

3 THE COURT: Does anyone object to excusing juror
4 number 158? No objection?

5 MR. BRAFMAN: No objection.

6 MS. SMITH: No.

7 (Prospective juror joins side bar.)

8 THE COURT: Ma'am, we will excuse you. Please go to
9 the jury room and tell them you have been excused.

10 THE PROSPECTIVE JUROR: Thank you.

11 THE COURT: All right? Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE PROSPECTIVE JUROR: Sorry.

15 THE COURT: Okay. All right. Juror Number --

16 THE PROSPECTIVE JUROR: 137.

17 THE COURT: Okay. Come on up.

18 THE PROSPECTIVE JUROR: I'm sorry it took me so
19 long.

20 THE COURT: Come on up. Your number?

21 THE PROSPECTIVE JUROR: 137, please.

22 (Side bar continues; prospective juror joins.)

23 THE COURT: All right. What would you like to tell
24 us?

25 THE PROSPECTIVE JUROR: I work for the company. My

1 occupational position rather is I'm a general manager sales,
2 okay, and I just realized that this trial might take four to
3 six weeks.

4 THE COURT: Yes.

5 THE PROSPECTIVE JUROR: And there's no way in the
6 world I could leave my company for four to six weeks or for an
7 extensive period of time because, again, my position requires
8 daily contact with my clients, daily. That means not over the
9 phone, but physically visiting store. Now, I'm in sales.

10 THE COURT: What kind of business is it in?

11 THE PROSPECTIVE JUROR: This is organic food
12 products.

13 THE COURT: Okay.

14 THE PROSPECTIVE JUROR: Dairy and frozen.

15 THE COURT: So you have to go --

16 THE PROSPECTIVE JUROR: I absolutely must. And also
17 on a little lighter side, if I may, this will, I will not be
18 able to put my mind into the right perspective in terms of a
19 trial to be completely fair because of my job.

20 THE COURT: You'll be thinking about --

21 THE PROSPECTIVE JUROR: I will be preoccupied.

22 THE COURT: Well, it's important that you be able to
23 pay very close attention --

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: -- to everything. So, you are Juror

Side Bar

259

1 Number 137?

2 THE PROSPECTIVE JUROR: That is correct.

3 THE COURT: And you're sure there is nobody else at
4 your job who can fill in for you?

5 THE PROSPECTIVE JUROR: No. It's just, just me. My
6 key accounts.

7 THE COURT: Okay. Any objections to excusing Juror
8 Number --

9 MS. KASULIS: No.

10 THE COURT: Mr. Brafman?

11 MR. BRAFMAN: No objection.

12 THE COURT: Okay. I will excuse you then.

13 THE PROSPECTIVE JUROR: Thank you kindly.

14 THE COURT: Tell them you are excused.

15 THE PROSPECTIVE JUROR: I will.

16 (Prospective juror excused.)

17 (In open court.)

18 THE COURT: Juror Number 160, please come forward.

19 Seat number 30, Juror Number 160.

20 (Side bar continues; prospective juror joins.)

21 THE COURT: Hi. How are you? Juror Number 160.

22 THE PROSPECTIVE JUROR: 160.

23 THE COURT: Yes, ma'am.

24 THE PROSPECTIVE JUROR: I'm a single person and live
25 on my own. I just started a new position at a company as a

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Side Bar

260

1 contractor next week and without the money coming in, I will
2 not be able to pay my bills.

3 THE COURT: All right. And your employer will not
4 pay?

5 THE PROSPECTIVE JUROR: I'm a contractor so there's,
6 and I would be just starting, so there's no way they would pay
7 me.

8 THE COURT: All right. Well, then I will excuse
9 you. All right. Ma'am, just go to the jury room and tell
10 them that you have been excused.

11 THE PROSPECTIVE JUROR: I appreciate it. Thank you
12 very much.

13 THE COURT: Any objection to having excused Juror
14 Number 160?

15 MR. BRAFMAN: No.

16 MS. KASULIS: No.

17 THE COURT: No? All right.

18 (Prospective juror excused.)

19 (In open court.)

20 THE COURT: Is there anyone else in the box to my
21 left?

22 All right. Let me look at the front row in front of
23 me.

24 Juror Number 163, seat number 33. Yes, ma'am.

25 (Side bar continues; prospective juror joins.)

CMH

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1 THE PROSPECTIVE JUROR: I'm a teacher. Today is a
2 non-school day so I'm able to come and two more days, my
3 students will be have a vacation. So my mind is just -- I
4 have to distribute report cards, I have to clean up my room
5 and also, you know, a lot of things for my students.

6 Also, my husband is a police officer so when you
7 mentioned criminal case, you know, whether cyber crime or
8 crimes on the street, I cannot, in the back of my head, I
9 cannot make a fair decision about cases like that because, you
10 know, he's risking his life every day to protect our society.
11 So that's going to -- that's the difficulty that I'm having.

12 THE COURT: All right. So, are you saying that in
13 any criminal case involving charges, you don't think you can
14 be fair because of what your husband does?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Well, then I will excuse you to go to
17 the jury room and see if there is a civil case that you will
18 be eligible to sit on, okay, the jury room where you checked
19 in earlier.

20 THE PROSPECTIVE JUROR: Okay.

21 THE COURT: Juror Number 163 is excused without
22 objection?

23 MS. KASULIS: No objection.

24 MR. BRAFMAN: No objection.

25 (Prospective juror excused.)

Side Bar

262

1 MS. KASULIS: May I ask a question? There's some
2 jurors who have been stricken because they are unavailable.
3 Do they stay on the list, do you know?

4 THE COURT: They shouldn't be. If they're stricken
5 because they're unavailable, they shouldn't be on the list. I
6 think it's the length of the trial that's stumping most of
7 this. If someone tells me they're not available, I'm telling
8 them go back and, you know, be excused for good. So, unless
9 it's something where they could serve for a week or so.

10 MS. KASULIS: Okay.

11 THE COURT: Okay.

12 MS. KASULIS: Thank you, Your Honor.

13 (In open court.)

14 THE COURT: Who else had their hand up in the first
15 row? Juror Number 164.

16 (Side bar continues; prospective juror joins.)

17 THE COURT: You are Juror Number 164. Yes, sir.

18 THE PROSPECTIVE JUROR: This is a six-week trial?

19 THE COURT: Yes, that's what I've said.

20 THE PROSPECTIVE JUROR: The first week of August,
21 I'm not sure, I have a trip.

22 THE COURT: When do you leave?

23 THE PROSPECTIVE JUROR: August 4th.

24 THE COURT: Okay. And where are you going?

25 THE PROSPECTIVE JUROR: Canadian Rockies.

CMH

OCR

RMR

CRR

FCRR

1 THE COURT: Is that a trip that you can just bump
2 back by a week or so?

3 THE PROSPECTIVE JUROR: Probably not. It's not my
4 choice to make the trip. It's my parents.

5 THE COURT: I see. And they've got everything
6 reserved?

7 THE PROSPECTIVE JUROR: Yes, already.

8 THE COURT: All right. I think that we're, we just
9 want to make sure that jurors are available through, for the
10 full six weeks, so I suppose you are going to be possibly in
11 conflict with your parent's vacation schedule.

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Under those circumstances, unless
14 there's an objection, I will excuse you, sir.

15 THE PROSPECTIVE JUROR: I'm sorry.

16 THE COURT: All right. Thank you.

17 (Prospective juror excused.)

18 (In open court.)

19 THE COURT: All right. Do we have anyone else?

20 Ma'am, you are Juror Number 166?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Please come forward. Thank you.

23 (Side bar continues; prospective juror joins.)

24 THE PROSPECTIVE JUROR: Hello.

25 THE COURT: Hello, ma'am. Please have a seat. How

Side Bar

264

1 are you? You are Juror Number 166?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Yes, ma'am.

4 THE PROSPECTIVE JUROR: I have a flight leaving
5 July 6th that's nonrefundable and returning July 10th.

6 THE COURT: Okay. Then we will excuse you. All
7 right. Have a nice trip. Safe flight.

8 THE PROSPECTIVE JUROR: Thank you.

9 THE COURT: Go to the jury room so you can get your
10 paperwork.

11 THE PROSPECTIVE JUROR: Okay.

12 THE COURT: Thank you.

13 (Prospective juror excused.)

14 (In open court.)

15 THE COURT: Was there anyone else on this row?

16 All right. We have Juror Number, are you 167? Come
17 forward, please.

18 (Side bar continues; prospective juror joins.)

19 THE COURT: Hello, ma'am. Number 167, hello. What
20 do you have to tell us?

21 THE PROSPECTIVE JUROR: I want to be excused because
22 they run, the company that I work is only six employees and
23 they only one full time.

24 THE COURT: Okay.

25 THE PROSPECTIVE JUROR: Okay. And also I have a

CMH

OCR

RMR

CRR

FCRR

1 hand surgery.

2 THE COURT: You have what?

3 THE PROSPECTIVE JUROR: Surgery on my hand.

4 THE COURT: You have an appointment for surgery?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: We will excuse you then. All right?

7 THE PROSPECTIVE JUROR: Thank you very much.

8 THE COURT: Juror Number 167 is excused absent any
9 objections.

10 MS. KASULIS: No objection.

11 MR. BRAFMAN: No, Your Honor.

12 (Prospective juror excused.)

13 (Continued on next page.)

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Sidebar

266

1 (Continuing)

2 THE COURT: Was there anyone else on the first row?
3 You must be Juror No. 169.

4 (Sidebar continues; prospective juror joins.)

5 THE COURTROOM DEPUTY: Hi, how are you?

6 THE PROSPECTIVE JUROR: I'm fine. How are you?

7 I'm a second medical year medical student. So, I'm
8 getting my Step One score on Wednesday and once I get the
9 passing score, I'm actually moving to Ohio on Friday.

10 THE COURT: I guess we'll have to let you go. I
11 hope you get your passing score.

12 THE PROSPECTIVE JUROR: Thank you.

13 THE COURT: Juror No. 169 is excused.

14 (Prospective juror excused.)

15 THE COURT: Should we keep going? Do you want to
16 keep looking into the other jurors?

17 We have up to 50. So, it's 5 o'clock. Does anyone
18 have any objection?

19 MR. BRAFMAN: I don't have an objection. If we have
20 to come back tomorrow, I'd just as soon break and come back
21 tomorrow. But I'm going to try to be reasonable throughout
22 the trial, Judge.

23 THE COURT: I know. I have no other expectation of
24 you, Mr. Brafman.

25 She has 300 sitting in the jury room, so we should

Sidebar

267

1 let them go for the night. Should we examine the rest?

2 MR. BRAFMAN: Whatever you want.

3 THE COURT: We have enough to get to the 40, but we
4 might lose others.

5 MS. KASULIS: Yeah.

6 THE COURT: I thought maybe we should keep going a
7 little bit longer.

8 MS. SMITH: That's fine.

9 (In open court.)

10 THE COURT: I'm just going to ask the jurors in the
11 second row whether they would like to raise their hand and be
12 heard if the answer to any of their questions would be yes.
13 That would be starting with Juror No. 171.

14 Is that your number, ma'am? Do you have a yes
15 answer for me? All right. Please come forward.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: Hello, Juror 171. Nice to see you.
18 Have a seat.

19 What would you like to tell us?

20 THE PROSPECTIVE JUROR: Years ago, I used to work in
21 little boutique clothing store and he came inside the store
22 and robbed us. And I had to come and testify him. Every time
23 I come to the court -- right now, my heart is racing.

24 THE COURT: You're nervous.

25 THE PROSPECTIVE JUROR: I'm so nervous. I was

Sidebar

268

1 traumatized every since then. Like, I cannot...

2 THE COURT: The charges in this case are very
3 different from what you've suffered.

4 THE PROSPECTIVE JUROR: Okay.

5 THE COURT: Would that alleviate some of your
6 anxiety to know that the charges in this case don't involve
7 anything related to what you've just described?

8 THE PROSPECTIVE JUROR: Okay, just that I get
9 nervous.

10 THE COURT: Would that help you feel better or do
11 you still feel nervous being in court?

12 THE PROSPECTIVE JUROR: My heart is racing right
13 now. I don't want to say the wrong things.

14 THE COURT: We want you to say -- nothing is wrong,
15 no answers are wrong. What's really important is that you be
16 very honest with us.

17 So, I have described the charges earlier and it
18 doesn't bear on anything like what you have described. Would
19 that still make you feel anxious to be here as a juror or
20 could you focus on the evidence and keep a fair mind to both
21 parties?

22 THE PROSPECTIVE JUROR: I could try. I feel nervous
23 right now.

24 THE COURT: I don't mean to make you feel nervous, I
25 want you to feel calm. What we want are juror who are

LAM

OCR

RPR

Sidebar

269

1 committed to maintaining an open mind and fair mind and to
2 decide this case without fear or favor towards any party but
3 just decide based only on the evidence in this case.

4 THE PROSPECTIVE JUROR: Okay.

5 THE COURT: Do you feel you could do that?

6 THE PROSPECTIVE JUROR: I could try my best.

7 THE COURT: Are you on any medication to address
8 your anxiety?

9 THE PROSPECTIVE JUROR: No, I don't take any
10 medication.

11 THE COURT: Would you be able to focus and
12 concentrate on the evidence in this case?

13 THE PROSPECTIVE JUROR: Like I said, when I'm in
14 courtroom right now, I feel, like, nervous because of what
15 happened to me.

16 THE COURT: Okay. I understand. Let me just ask
17 you to step to the side just for one moment.

18 THE PROSPECTIVE JUROR: I'm so sorry.

19 THE COURT: That's all right. Just step aside one
20 moment.

21 (Prospective juror leaves sidebar.)

22 MR. BRAFMAN: Your Honor, the juror exhibits -- she
23 is gouging her hands while talking to you. She's really
24 suffering from anxiety. I think she should be excused.

25 MS. KASULIS: No objection.

Sidebar

270

1 THE COURT: Okay. We'll excuse her.

2 (Prospective juror joins sidebar.)

3 THE COURT: Ma'am, we'll excuse you. Please go back
4 to the jury room where you started this morning.

5 THE PROSPECTIVE JUROR: I'm so sorry about that.

6 Thank you so much.

7 (Prospective juror excused.)

8 (In open court.)

9 THE COURT: Was there anyone else?

10 Juror No. 172, please come forward.

11 (Sidebar continues.)

12 THE COURT: Are you going to be prepared to argue on
13 your motion for reconsideration?

14 MR. BRAFMAN: I'll just have to break for a few
15 minutes.

16 THE COURT: We only have a few more.

17 (Prospective juror joins sidebar.)

18 THE COURT: You're Juror No. 172.

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Please have a seat, ma'am. How are you?

21 THE PROSPECTIVE JUROR: Good.

22 THE COURT: Thank you for your patience.

23 What would you like to tell us right now.

24 THE PROSPECTIVE JUROR: I work in the Bronx at a
25 Board of Housing building with very vulnerable formerly

Sidebar

271

1 homeless mentally ill people with substance use. There's very
2 small staff. I'm the associate director/clinical coordinator.
3 It's very stressful, and I just don't think, first of all, I
4 could focus; and, second of all, just a lot of staffing issues
5 right now, a lot of issues with the residents, and it's just a
6 lot.

7 THE COURT: All right. Thank you for letting us
8 know. Just sit tight for one moment.

9 Does anyone have --

10 MR. BRAFMAN: No objection.

11 MS. KASULIS: No.

12 THE COURT: We'll dismiss Juror No. 172.

13 Go to the jury room where you checked in this
14 morning. This is you, right?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: You'll let them know you've been
17 excused.

18 (Prospective juror excused.)

19 THE COURT: Is there anyone else in the second row?
20 Juror 173, come on up, please.

21 (Sidebar continues; prospective juror joins.)

22 THE COURT: Hello, No. 173. How are you?

23 THE PROSPECTIVE JUROR: How are you?

24 THE COURT: What would you like to share with us?

25 THE PROSPECTIVE JUROR: You asked if we have any

1 prior knowledge. And I do work in the media industry and I
2 do, you know, know about the Defendant, how he hiked the
3 prices for drugs for people that really can't afford them;
4 actually had a friend or two that have interacted with him on
5 social media as well. So, yes, I'm not a very big fan.

6 THE COURT: The question is whether you could, as a
7 juror, maintain a fair and impartial mind to both sides.

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: You understand impartiality, right?

10 THE PROSPECTIVE JUROR: Yes, I just don't personally
11 think I'd be able to. I have people in my family -- my dad
12 has diabetes, my grandfather passed away from cancer. I just
13 don't -- feel very strongly about the issue, but can't
14 quite -- that's all.

15 THE COURT: I've read to you the summary of the
16 charges in this case, which aren't directly related to the
17 pricing of drugs. It is possible there could be evidence
18 presented on that issue, but at this point the charges are as
19 I described.

20 Given that, would you be able to be fair to both the
21 Government and Mr. Shkreli as you evaluate the evidence with a
22 open and fair mind or would you feel that your knowledge of
23 him in the media would impair your ability?

24 THE PROSPECTIVE JUROR: I think it would. To be
25 perfectly honest, I think it would.

Sidebar

273

1 THE COURT: Well, thank you for your honesty. I
2 will excuse you, sir. Go to the jury room and tell them you
3 are excused.

4 Juror No. 173 is excused.

5 MS. KASULIS: No objection.

6 MR. BRAFMAN: No objection.

7 THE PROSPECTIVE JUROR: Thank you.

8 (Prospective juror excused.)

9 THE COURT: The jurors need a restroom break.

10 MR. BRAFMAN: Just send them home.

11 THE COURTROOM DEPUTY: It's just the one.

12 THE COURT: We'll let one take a bathroom break.

13 (In open court.)

14 THE COURT: Was there anyone else in the row?

15 Juror No. 175, come on up, sir.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: You are number 175. How are you? Nice
18 T-shirt.

19 THE PROSPECTIVE JUROR: Thank you.

20 THE COURT: Tell us about any issues you have.

21 THE COURT: I'm moving to LA in early August, first
22 week of August.

23 THE COURT: That's a hard date?

24 THE PROSPECTIVE JUROR: It had to do with the money.
25 I work 50 plus hours a week, I work three part-time jobs. I'm

Sidebar

274

1 just -- it's hard to make a living. If I'll be here, \$40
2 isn't really going to cut it.

3 THE COURT: You're working three part-time jobs
4 right now?

5 THE PROSPECTIVE JUROR: And I'm acting in Off
6 Broadway show. I would love to do this, it would be great,
7 but it's very bad timing.

8 THE COURT: Given your conflicts, I'll excuse you.
9 Go to the jury room and tell them you have been excused.

10 THE PROSPECTIVE JUROR: Thank you.

11 THE COURT: Thank you.

12 (Prospective juror excused.)

13 (In open court.)

14 THE COURT: Was there anyone else in the second row?
15 Are you Juror No. 177?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Come forward, sir.

18 (Sidebar continues; prospective juror joins.)

19 THE COURT: How are you, sir? Thank you for your
20 patience. Have a seat, just take care.

21 All right, sir, tell us about any issues you may
22 have.

23 THE PROSPECTIVE JUROR: I have a vacation on 5th,
24 6th, 7th and 22nd, 23rd, 24th out of town.

25 THE COURT: This is July?

Sidebar

275

1 THE PROSPECTIVE JUROR: July.

2 THE COURT: These are dates that are set?

3 THE PROSPECTIVE JUROR: Already set.

4 THE COURT: And you bought tickets and all of that,
5 not refundable or changeable?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: I will excuse Juror No. 177.

8 Thank you, sir, have a nice trip.

9 THE PROSPECTIVE JUROR: Thank you.

10 (Prospective juror excused.)

11 THE COURT: That was 177. 176 is in the restroom.

12 MS. KASULIS: Thank you.

13 THE COURT: No objection, correct?

14 MS. SMITH: No objection.

15 MR. BRAFMAN: No objection.

16 (In open court.)

17 THE COURT: Juror 176, you're back. Did you have
18 your hand up at any point?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: Juror 178, come forward.

21 (Sidebar continues; prospective juror joins.)

22 THE COURT: Hello, Juror No. 178. How are you?

23 THE PROSPECTIVE JUROR: Good, thank you.

24 THE COURT: What do you have to tell us?

25 THE PROSPECTIVE JUROR: I have some travel plans

1 this Friday and at the end of July I'll be away for three
2 weeks.

3 THE COURT: Those are hard and fast plans?

4 THE PROSPECTIVE JUROR: Yes.

5 Is this the case involving price inflation?

6 THE COURT: The charges do not include price
7 inflation.

8 But given your travel plans, I'll excuse you. Have
9 a nice trip.

10 (Prospective juror excused.)

11 (In open court.)

12 THE COURT: Who else on this row?

13 Juror 179, come forward.

14 (Sidebar continues; prospective juror joins.)

15 THE COURT: Juror No. 179, come forward. Have a
16 seat. How are you?

17 THE PROSPECTIVE JUROR: Okay.

18 THE COURT: What have you got to tell us?

19 THE PROSPECTIVE JUROR: I have a son with ADHD on
20 medication. And we applied for a summer program in Rutgers
21 University. We didn't think he would get in. He got in.
22 Because we didn't expect it, we didn't realize transportation
23 is not provided. It's only for month of July. Every Monday I
24 have to take him by 8:30 and every Friday pick him up
25 5 o'clock.

Sidebar

277

1 I didn't realize the case was just for July. So, it
2 will impact on that. That would be a hardship for me.

3 THE COURT: There's no one else in your family?

4 THE PROSPECTIVE JUROR: Unfortunately, my father
5 would be the one; he passed away. My mother doesn't drive.
6 My wife, she's in Elmhurst. I'm the only one available to get
7 there quick enough in an emergency.

8 THE COURT: Sir, I will excuse you. Thank you very
9 much.

10 THE PROSPECTIVE JUROR: I apologize.

11 THE COURT: That's all right. Go to the jury room
12 and tell them you're excused and get your paperwork.

13 THE PROSPECTIVE JUROR: Thank you.

14 (Prospective juror excused.)

15 THE COURT: No objection, right?

16 MR. BRAFMAN: No objection.

17 MS. KASULIS: No objection.

18 (In open court.)

19 THE COURT: Juror 180, you had your hand up. Come
20 up, sir.

21 (Sidebar continues; prospective juror joins.)

22 THE COURT: How are you, sir? Have a seat.

23 Juror No. 180?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: How are you, sir?

Sidebar

278

1 THE PROSPECTIVE JUROR: Good. How are you?

2 THE COURT: Good.

3 What would you like to tell us?

4 THE PROSPECTIVE JUROR: My son is a police officer
5 for the City of New York, and, second, I have a ticket to go
6 to Cypress to see my ill father on July 29.

7 THE COURT: We'll excuse you then, sir.

8 THE PROSPECTIVE JUROR: Thank you very much.

9 THE COURT: Just tell the jury clerk that you're
10 excused and get your paperwork.

11 (Prospective juror excused.)

12 THE COURT: We're finished with this pool. Does
13 anyone see the need to get more jurors back?

14 MR. BRAFMAN: Today?

15 THE COURT: Tomorrow.

16 Do you feel that we need more? We are going to have
17 additional voir dire and we may lose other jurors. I'm only
18 question three.

19 MS. KASULIS: I think we should.

20 MR. BRAFMAN: You can bring in some, I don't think
21 you need 130.

22 THE COURT: Maybe bring 50 more or 60 more tomorrow?

23 THE COURTROOM DEPUTY: Six zero?

24 THE COURT: Yes.

25 MS. KASULIS: That makes sense.

Sidebar

279

1 MR. BRAFMAN: Can we have a five-minute break before
2 you proceed?

3 THE COURT: Yes. What I'm going to do is I'm going
4 to excuse the jurors, admonish them not to speak or do
5 research, and tell them to come back tomorrow by 9:30 to the
6 jury room. And we'll get all of those jurors back.

7 Thank you.

8 (Sidebar ends; in open court.)

9 THE COURT: I'd like to thank all of you for your
10 patience. I would like to ask you to please return tomorrow
11 morning by 9:30. Please go directly to the jury room where
12 you checked in this morning. I am very grateful for your
13 indulgence and I know this has been a long process.

14 THE PROSPECTIVE JUROR: There's a reason why I don't
15 believe I can be partial.

16 THE COURT: Let's not talk about that in open court.

17 THE PROSPECTIVE JUROR: I'm saying --

18 THE COURT: Please, if we need to hear from you
19 about that issue, we will do it at sidebar. That's why we've
20 been at sidebar; to talk about scheduling and other issues.

21 So, let me just admonish everybody that you should
22 not read about, listen to, or discuss this case with anybody.
23 Do not allow anybody to talk to you about this case. If
24 anyone approaches you about the case, please let us know.
25 Don't conduct any social media research. And if you hear

Jury Selection

280

1 something on the news or you get a pop-up on your phone about
2 anything relating to this case, please don't read it, don't
3 listen to it, don't watch it.

4 I will see you tomorrow morning at 9:30. But let me
5 just also say that we'll hear from the gentleman in the front
6 row at sidebar. The rest of you may be excused for the
7 evening. And please, as I said, return by 9:30.

8 Yes? You need to speak to me at sidebar also?

9 Didn't we already -- is there something else that
10 you need to talk to us about?

11 THE PROSPECTIVE JUROR: It's not the question, it's
12 something else.

13 THE COURT: I suppose, then, Juror No. --

14 THE PROSPECTIVE JUROR: 138.

15 THE COURT: Juror No. -- what's your number?

16 THE PROSPECTIVE JUROR: 143.

17 THE COURT: Was there another hand up?

18 If any of you need to speak to me at sidebar, we'll
19 do that right now.

20 THE PROSPECTIVE JUROR: I have a question.

21 THE COURT: Yes, ma'am.

22 THE PROSPECTIVE JUROR: I have a doctor's
23 appointment tomorrow in the morning.

24 THE COURT: What time?

25 THE PROSPECTIVE JUROR: 9:30, 9:45. So, I was

Jury Selection

281

1 just -- there's no hardship but just that.

2 THE COURT: Is it possible to postpone your
3 appointment?

4 THE PROSPECTIVE JUROR: I'll try but it's kind of
5 late now.

6 THE COURT: I'll give you the phone number of our
7 case manager. And if you would, just write your name, juror
8 number, and phone number on this piece of paper. If you get
9 it changed --

10 THE PROSPECTIVE JUROR: Changed? Okay.

11 THE COURT: Or earlier. We're not sitting July 3,
12 if they can do it July 3. Or even late on a Friday afternoon.

13 THE PROSPECTIVE JUROR: Okay, late on a Friday.

14 THE COURT: If that's possible. If not, you'll let
15 us know.

16 And your juror number is?

17 THE PROSPECTIVE JUROR: 152.

18 THE COURT: All right. I'll ask you to put your
19 phone number on this piece of paper.

20 All right. I think we should go to sidebar and hear
21 from Juror No. 138.

22 The rest of you are excused. Please return to the
23 jury room tomorrow morning no later than 9:30.

24 Thank you.

25 (Sidebar continues; prospective juror joins.)

Sidebar

282

1 THE COURT: Juror No. 138, right?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Keep your voice down. I'm sorry, I
4 don't have that white noise machine on. Please be quiet.

5 THE PROSPECTIVE JUROR: In 2013, a case I brought
6 against Nassau County was heard in state court. I sued Nassau
7 County for violation of civil service law by laying me off
8 December 2011 and transferring my duties to someone who held a
9 civil service title that did not include those duties.

10 THE COURT: Okay.

11 THE PROSPECTIVE JUROR: During the trial, I had the
12 Director of Nassau County Civil Service state in court that
13 what they did is, in fact, in violation of civil service law,
14 by transferring the duties of a director of labs and research
15 to an Organic Chem 1.

16 THE COURT: Okay.

17 THE PROSPECTIVE JUROR: The Judge ignored that and
18 held for the County. And since then, I've gone -- in my mind,
19 I don't believe the Government is equal under the law in court
20 and I don't feel that I can be impartial if the Government is
21 a party, either as a plaintiff or a defendant.

22 THE COURT: So, in other words, you would be
23 inclined against the Government?

24 THE PROSPECTIVE JUROR: Yeah. In this case, it was
25 clear to me they did what they wanted to do, the state and

Sidebar

283

1 county.

2 THE COURT: This is the federal Government that has
3 brought this case. Do you still have those feelings towards
4 the federal Government as well?

5 THE PROSPECTIVE JUROR: Against any Government.
6 When I saw what they could do, when the judge, irrespective of
7 the testimony in court by the director of Nassau County Civil
8 Service, could decide whatever he wanted to.

9 THE COURT: Let me just have you step away for one
10 moment.

11 (Prospective juror leaves sidebar.)

12 MS. KASULIS: Your Honor, objection for cause.

13 MR. BRAFMAN: No objection. I have something funny
14 to say, but she's here.

15 THE COURT: Too bad. We're going to miss that good
16 joke.

17 (Prospective juror joins sidebar.)

18 THE COURT: All right, sir, we'll excuse you. You
19 can tell the jury folks down at the jury room where you
20 checked in today that you're excused. Thank you.

21 (Prospective juror excused.)

22 (In open court.)

23 THE COURT: Are you No. 143?

24 THE PROSPECTIVE JUROR: Yeah, 143.

25 THE COURT: Come forward.

Sidebar

284

1 (Sidebar continues; prospective juror joins.)

2 THE COURT: Juror No. 143, yes, ma'am.

3 THE PROSPECTIVE JUROR: I have payroll issue. I
4 need a transfer on my payroll and this is pay week. I want to
5 go back to work.

6 THE COURT: To work tomorrow to straighten out your
7 payroll issues?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Is there any other day or any other way
10 that you can address your payroll issues?

11 THE PROSPECTIVE JUROR: Actually, we need to send
12 out payroll. This was the week before, this was the payroll
13 period before. And this week we have another payroll period
14 we need to submit on Monday, but tomorrow is the last day to
15 submit. So, I have two pay period I need to address.

16 THE COURT: And what happens if you don't go in
17 tomorrow to do this?

18 THE PROSPECTIVE JUROR: They postpone my pay.

19 THE COURT: Do you know whether you'll be paid
20 during the time you're on jury duty? Does your employer pay
21 you while you're on jury duty?

22 THE PROSPECTIVE JUROR: No pay, no.

23 THE COURT: Let me just ask you to step over there,
24 please, just over to the side.

25 (Prospective juror leaves sidebar.)

Sidebar

285

1 THE COURT: All right. I think she doesn't want to
2 be here tomorrow at least because of her pay.

3 MR. BRAFMAN: I agree.

4 MS. KASULIS: Yeah.

5 (Prospective juror joins sidebar.)

6 THE COURT: Ma'am, we'll excuse you. Just go to the
7 jury office where you checked in this morning and tell them
8 you're excused.

9 (Prospective juror excused.)

10 THE COURT: Juror No. 143 is excused. No
11 objections?

12 MS. KASULIS: No objection.

13 THE COURT: All right. We had one other person.

14 THE COURT: Juror No. 153, please come to the
15 sidebar.

16 (Sidebar continues; prospective juror joins.)

17 THE COURT: Hello, sir. How are you? Nice to see
18 you.

19 What would you like to tell us?

20 THE PROSPECTIVE JUROR: I am not that much
21 education. I hear you, I understand, but I know one thing:
22 Police officer, FBI, they do good job and they do honestly
23 catching the right criminal or whatever. I know long time
24 that.

25 THE COURT: You believe that the FBI and the police

1 do a good job?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: Would you be able to evaluate the
4 evidence fairly and be fair to both sides and keep an open
5 mind and listen to the evidence in this case?

6 THE PROSPECTIVE JUROR: No, I just hear from you.

7 THE COURT: Okay. Let me ask you, how long have you
8 been in this country?

9 THE PROSPECTIVE JUROR: Like, almost 30.

10 THE COURT: 30 years, okay.

11 What have you been doing as a job?

12 THE PROSPECTIVE JUROR: Just handyman, painting.

13 THE COURT: Handyman and painting.

14 When you do your job, do you communicate with your
15 customers in English?

16 THE PROSPECTIVE JUROR: Little.

17 THE COURT: Do you speak to them in English?

18 THE PROSPECTIVE JUROR: Yes, but not that much. My
19 brother talk to them.

20 THE COURT: Your brother works with you also?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Does he speak English well?

23 THE PROSPECTIVE JUROR: Better.

24 THE COURT: Let's go back to the statement you made
25 about the FBI. The question is could you be fair and

Sidebar

287

1 open-minded towards the Government in this case and the
2 Defendant?

3 Can you be fair to both sides when you would listen
4 to the evidence?

5 THE PROSPECTIVE JUROR: Honestly, I tell you I knew
6 one thing along 30 years: In this country, police officer,
7 FBI, they working very good. It's not like my country.

8 THE COURT: Let me ask you to just step to the side
9 for one moment. We will come right back to you.

10 (Prospective juror leaves sidebar.)

11 MR. BRAFMAN: Judge, I think he should be excused.
12 I think he's enamored with the FBI. And that's all well and
13 good as a citizen, but not as a criminal defense lawyer.

14 MS. SMITH: It did seem like there also were
15 language issues.

16 MS. KASULIS: That's our concern. We had issues
17 whether he could understand.

18 THE COURT: I will dismiss Juror No. 153 on consent
19 of the parties.

20 (Prospective juror joins sidebar.)

21 THE COURT: Sir, I'm going to excuse you from this,
22 and you may go to the room where you checked in this morning
23 and tell them you're excused.

24 THE PROSPECTIVE JUROR: Thank you very much.

25 THE COURT: Thank you. Good-bye.

Sidebar

288

1 (Prospective juror excused.)

2 THE COURT: So, did you want to take a break now?

3 Do we have anyone else to talk to over there?

4 THE COURTROOM DEPUTY: No.

5 MR. BRAFMAN: Can the Defendant step out a minute or

6 two?

7 THE COURT: Sure, just come back. Five to ten

8 minutes?

9 MR. BRAFMAN: Five minutes.

10 THE COURT: We'll take a five-minute break.

11 Did you all file anything? Did the Government file

12 anything?

13 MS. KASULIS: No, we did not.

14 (Recess taken.)

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16 (Continued on next page.)

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1 (In open court; outside the presence of the jury.)

2 THE COURT: Let me state what we are doing here.

3 Last evening, at approximately 10:00 p.m., we received a
4 motion for reconsideration, which is No. 258 in the docket.

5 This was a motion filed by Mr. Shkreli asking that I
6 reconsider a ruling that I made regarding the defense, or the
7 issue of lack of ultimate harm to investors. Just for the
8 record, I do want to be clear as to what my ruling was because
9 I think that it is possible that it may have been over read.

10 I ruled that Mr. Shkreli may not argue that because some
11 investors may have profited from their investment relationship
12 with Mr. Shkreli, that he lacked intent to defraud. It was a
13 very narrow ruling. It did not concern evidence and it was
14 just arguing to the jury that simply would prohibit an
15 argument that profit equals lack of intent to defraud, but I
16 am happy to hear from you.

17 MR. BRAFMAN: Yes, your Honor.

18 THE COURT: I did want to say one other thing, if I
19 could. I want to assure the parties I have not prejudged or
20 made any decisions about the evidence. When I considered the
21 arguments of the parties, I tried my best to glean what their
22 positions were based on their submissions. I would note that
23 some of these issues were not even raised in the papers before
24 me. So we tried to stick with the arguments raised in the
25 motions. What I got last night in the motion for

1 reconsideration was certainly a more fulsome explanation of
2 what Mr. Shkreli's defense theory would be, but I must say
3 that in the sur-reply there was no addressing of this issue.
4 And in the opposition, there was minimal addressing of the
5 issue, certainly not to the depth described in document No.
6 258, last evening's motion for reconsideration. Nonetheless,
7 Mr. Brafman, I do want to assure you I did not intend to
8 convey any conclusions or interpretations about the evidence.
9 What I was doing, and I think in some ways you might have
10 quoted or taken some of the decision out of context, when I
11 discussed Count Seven, that discussion was based on what the
12 defendant had argued and what the Government had proffered in
13 the way of its proof. So I wasn't intending to convey that I
14 had any opinion. So it was really just to use what the
15 parties had proffered in my analysis. But I am happy to hear
16 from you, Mr. Brafman.

17 MR. BRAFMAN: Your Honor, I think the position we
18 laid out in our letter, and I apologize with -- I start by
19 saying we did not mean in any way any disrespect.

20 THE COURT: I am not taking it that way at all. I
21 want you to raise whatever you need to raise with me. I am
22 not offended in the least.

23 MR. BRAFMAN: Because when we read Your Honor's
24 decision, and in principal part from pages 36 to 40, the
25 concern we had was more than just about argument. There was

1 reference to the fact that certainly if Mr. Shkreli paid back
2 MSMB investors from proceeds of a defraud on Retrophin that
3 would certainly not be part of the defense and our position is
4 that, quite frankly, the allegation of fraud on Retrophin is
5 probably the easiest count of this indictment for us to defend
6 against and I don't think that count perhaps even gets past
7 the Rule 29 once the evidence is in the case. But I don't
8 want to belabor the issue because the hour is late. We want
9 to be able to argue that Mr. Shkreli's intent, his state of
10 mind is relevant and the jury should consider it. And the
11 fact is this case is impossible to try without the jurors
12 knowing that the investors put amount X in and got back two
13 times X or three times X and, in some cases, even more. That
14 fact by itself does not suggest that Mr. Shkreli is innocent,
15 that the Government takes the position and Your Honor takes
16 the position that at the time he makes a misrepresentation,
17 right then and there he's guilty. We take the position that
18 he is not making misrepresentations, because I think the
19 evidence will show that the evaluation of Retrophin, even in
20 its immediate formation, was sufficient so that Mr. Shkreli
21 had a good faith basis to argue that the evaluations are not
22 false and that the statements given to the investors, when you
23 consider the amount of the evaluation of Retrophin, will show
24 that they are getting exactly what they should be told.

25 Our concern is that his intent and his state of mind

1 and his intent to defraud is simply not there. And I'm not
2 suggesting that because you made money that means he didn't
3 have the intent to defraud. I am suggesting and we have a
4 right to show that they made money because that tracks the
5 investment from the first time it is mentioned to these people
6 all the way through the time that they redeem the money. And
7 during this period, I think Mr. Shkreli intends for these
8 people to not lose their money and never intends for them to
9 lose their money and goes out of his way to seek to it that
10 they don't lose their money. So the fact that they don't lose
11 their money may not be the cure-all for this alleged crime,
12 but it is relevant because it shows that he was acting in good
13 faith when he talked to Darren Blanton about Retrophin early
14 on, immediately after the Orex's trade failure, when Mr.
15 Blanton blessed it and said go ahead, make money on Retrophin,
16 it's okay, Martin.

17 THE COURT: So, as I said, my rulings appears on
18 page 40 and continues to page 41 that Mr. Shkreli may not
19 argue that because some investors have profited from their
20 investment relationship that he lacked intent to defraud, and
21 what we are talking about is a continuum; correct?

22 MR. BRAFMAN: Yes.

23 THE COURT: So it starts with the solicitation of
24 investors in MSMB and continues up through the Retrophin
25 reverse merger and bringing that company public.

1 You are not being precluded from presenting evidence
2 that some of these investors profited. My concern was that
3 you not equate profit with lack of intention to defraud
4 regarding the MSMB investors. What is relevant is what is the
5 intent at the time of the alleged misrepresentation or
6 omission.

7 MR. BRAFMAN: And all I am suggesting is you are not
8 going to be able to, most respectfully, make that legal
9 determination until you have heard all of the evidence.
10 That's why when we read this we were concerned that we would
11 be precluded from introducing the evidence.

12 THE COURT: I did not order any preclusion of
13 evidence, sir.

14 MR. BRAFMAN: Okay.

15 THE COURT: I will hear from you further, if you
16 would like. I'm sorry if I have caused you any concern.

17 MR. BRAFMAN: No.

18 THE COURT: I think that what you have read in this
19 decision is an analysis of what the parties' arguments were in
20 regard to this issue in the motions. I tried to summarize
21 them and analyze the arguments in the context of what I
22 understand to be the law. You obviously have more facts at
23 your disposal than I do having been engrossed in preparing for
24 trial over the years. Certainly, some of the arguments and
25 theories that you have provided in your motion for

1 reconsideration were not fully flushed out in your prior
2 arguments or in your prior submissions. So I understand them
3 a little bit better now. But I'm not sure that the very
4 narrow ruling that I made regarding an equation of profit from
5 the Retrophin not equalling a negation of intent to defraud
6 with regard to the MSMB investments is --

7 MR. BRAFMAN: Then I think we are fine. I think,
8 Your Honor, what the Government's been petrified about, that
9 the way they write, is that there's going to be a jury
10 nullification perhaps because the jury will know that every
11 person who invested with Martin Shkreli hit a home run and
12 ultimately made a lot of money. If that's their concern, I
13 don't really understand it. Their witnesses are going to
14 testify and I assume that they are going to accuse Mr. Shkreli
15 of making certain misrepresentations. I think in the
16 cross-examination of many of the principal Government
17 investor-types, you will, I think, see and the jury will see
18 that the statements made by Mr. Shkreli to these people that
19 may appear to be on their face incorrect are accurate
20 evaluations, so it is a question of how you get there.

21 THE COURT: But you are not being precluded from
22 presenting that evidence.

23 MR. BRAFMAN: Okay. And I think if that is true, I
24 think at the end of the trial, I should be able, among the
25 arguments, among the arguments we will make at the end of the

1 trial is because it is continuum, because Martin Shkreli is
2 MSMB and Martin Shkreli is Retrophin, because it is a
3 continuing relationship with these investors, it may well be
4 the result of these ongoing discussions throughout that theory
5 is relevant as to whether or not Martin Shkreli was acting
6 with the requisite criminal intent to deceive these people. I
7 think you will see more of that when the trial starts.

8 THE COURT: Maybe I didn't use the word alleged or
9 charged often enough, but I thought that given the topic
10 sentence that I was discussing various arguments of the
11 parties that would be obvious. There may be one or two
12 sentences where I didn't insert the word alleged or charged
13 before the discussion, but I certainly thought, given the
14 header on the paragraph, that that would have been clear. But
15 one thing that the decision tried to emphasize is had
16 Retrophin been a total bust and had it declined in value, that
17 would not be evidence of Mr. Shkreli's intent at the beginning
18 of the solicitation of investors in MSMB. In a statement that
19 I made that I think really seemed to trouble you that you
20 quoted multiple times about the ex ante knowledge, I stated
21 that I believe that Mr. Shkreli could not have been certain ex
22 ante as to what the price of Retrophin stock would be
23 ultimately.

24 MR. BRAFMAN: But you don't have to be certain; you
25 have to be acting in good faith. And his evaluation early on,

1 ex ante was it is going to be valued at \$20 million, we have a
2 good faith basis as to how that number was arrived at. When
3 you look at the evaluations that the investors got, it was
4 based on a \$20 million evaluation and now it is a
5 billion-dollar company, which he discussed with many of the
6 Government witnesses throughout the relationship. So I think,
7 Judge, most respectfully, if Retrophin was a fraud and if
8 Retrophin was a bust and it turned into nothing, I think the
9 Government would be arguing that Martin Shkreli gave people
10 stock that was worthless, it was a continuation of the fraud.
11 So they can't have it both ways. They certainly would ask the
12 jury to consider the fact that I gave somebody stock that he
13 knew was worthless and it turned out to be worthless. He was
14 negotiating with these people and many of them wanted this
15 stock and some of their, quote, victims still own many
16 hundreds of thousands of shares of Retrophin stock and are
17 laughing all the way to the bank. This is a very strange
18 case, Judge.

19 THE COURT: All right. Let me hear from Ms.
20 Kasulis.

21 MS. KASULIS: Thank you, Your Honor, and thank you
22 for your clarification with respect to your order. The
23 Government's reading of your order was entirely consistent
24 with the way in which Your Honor described it today.

25 We also have the same take on Mr. Shkreli's letter,

1 that there is information that we are learning for the first
2 time, such as the MSMB and Retrophin entities were not
3 separate. In fact, now we are just seeing MSMB, instead of
4 MSMB Healthcare and MSMB Capital, which are two distinct and
5 separate hedge funds and we intend to show that at trial. I
6 don't think anyone is arguing that Mr. Shkreli can't, for
7 example, state that at the time he made the misrepresentations
8 with respect to Counts One through Six, if he believed at that
9 time that Retrophin would be successful that he can't argue
10 that, that that would not be a reflection of his perhaps good
11 faith intent. And, so, I think that we are perhaps all on the
12 same page here, that we don't think he should be precluded
13 from arguing that if that is, in fact, what he now intends to
14 argue. It is just the first time that we had seen it flushed
15 out this way. And we don't believe that your order precludes
16 him from making that argument, it was just the way
17 after-the-fact issue that we were mostly concerned about. So
18 we don't believe that Mr. Shkreli is precluded from arguing
19 what he is arguing in the letter according to the law. And,
20 of course, we will have to see how the evidence comes in and
21 we will then determine whether we should, in fact, pursue a
22 no-ultimate-harm jury instruction depending on how the
23 evidence comes in and how it's developed.

24 So I think we are all on the same page as to what
25 Your Honor's prior ruling is. We now have more information as

1 to what they intend to argue, so we believe they have a basis
2 of law to argue what is in this letter.

3 MR. BRAFMAN: We have nothing further to say.

4 THE COURT: I want you to go into this with a calm
5 state of mind. I didn't mean to cause any undue concern last
6 evening, but the tone of the letter was one of great concern
7 and it came in late and we wanted to address it as soon as
8 possible. As long as everybody is clear and we are ready to
9 proceed.

10 MR. BRAFMAN: Yes.

11 THE COURT: Good. Thank you.

12 Tomorrow we are going to shift our jury selection up
13 to my courtroom because this is a courtroom that is used for
14 your naturalization ceremonies. The way I am envisioning
15 tomorrow, and somebody tell me if you have a different view,
16 but I would be hoping to examine additional jurors from a new
17 group starting with, again, the introductions and the initial
18 questions. When I get everybody to the same place, which was
19 up to the question regarding the six-week trial and undue
20 hardship, and we are able to figure out who stays and who
21 goes, then we can proceed with the remainder of the questions.
22 We might at that point bring all of the other jurors back in.
23 Tomorrow morning I intended to start with the additional --
24 how many, Ms. Jackson, are we bringing in?

25 THE COURTROOM DEPUTY: 100 were scheduled, but we

1 have requested 60.

2 THE COURT: We are hoping to -- we have asked for
3 100, we are hoping to get 60, and that should be enough, I
4 hope.

5 MR. BRAFMAN: Yes.

6 THE COURT: Unless somebody has a different view.

7 MR. BRAFMAN: No.

8 Can I ask a scheduling question?

9 THE COURT: Yes.

10 MR. BRAFMAN: Assuming that we finish with jury
11 selection some time late tomorrow morning, I would think, at
12 the earliest or hopefully at the latest, the Court then wants
13 to proceed immediately with your initial instructions and then
14 the Government's opening and then witnesses?

15 THE COURT: Opening statements and if the defense
16 wishes to make an opening statement.

17 MR. BRAFMAN: Yes, it does.

18 THE COURT: How much time are we talking about on
19 the openings?

20 MS. KASULIS: No more, for us, than a half hour,
21 Your Honor, probably a little less.

22 THE COURT: Half an hour or a little less.

23 MR. BRAFMAN: I think to be on the safe side. I
24 think we are talking about an hour.

25 THE COURT: That is fine.

1 MR. BRAFMAN: We have been given a list of the
2 witnesses that the Government expects to call in the first
3 three days as per Your Honor's trial order, but if we could be
4 given a list of the order of the witnesses. There is so much
5 stuff to bring every day.

6 MS. KASULIS: Your Honor, we are happy to do that.
7 We can confer with counsel after this. Just because of the
8 way in which jury selection has been progressing, we have
9 witnesses traveling, so we're juggling schedules right now.

10 MR. BRAFMAN: The witnesses will be from among the
11 list that you gave us?

12 MS. KASULIS: Absolutely. Yes.

13 THE COURT: If it is of any help, we have storage
14 space available that we can secure every evening so you don't
15 have to schlep everything back and forth every day.

16 MR. BRAFMAN: Thank you, Judge.

17 THE COURT: Is there anything else that you want to
18 bring to my attention?

19 MR. BRAFMAN: No.

20 THE COURT: Would you please kindly show up in my
21 usual courtroom tomorrow at 9:00 a.m.?

22 MR. BRAFMAN: Yes, ma'am.

23 MS. KASULIS: Yes.

24 THE COURT: Thank you. Have a good night, everyone.

25 (Matter adjourned to June 27, 2017 at 9:00 a.m.)